

EXHIBIT B

CLERK'S TRANSCRIPT ON APPEAL
VOLUME 1(PAGES 277-580)



Alameda County
District Attorney's Office
Thomas J. Orloff, District Attorney

000278

VICTIM RESTITUTION ORDER FOR VCB CLAIM(S)

TO: Honorable Jon Rolefson
FROM: Inspector Tom Gandsey, Restitution Recovery Officer
Victim/Witness Assistance Program

DATE: February 13, 2002

FILED
ALAMEDA COUNTY

SUBJECT: Defendant: KILGORE, Ivan Dawnell
PFN #: BBV550
Docket #: 141033
Offense: PC 187

SEP 26 2002

CLERK OF THE SUPERIOR COURT

By W. Margaret C. English
Deputy

The family of the victim in the above named case, has filed a claim (#608643) for restitution with the Victim Compensation Board (VCB) Victims of Crime (VOC) Program. PENAL CODE section 1202.4(a)(3) states that, upon a person being convicted of any crime, the court shall impose both a Restitution Fine and a Restitution Order to the victim(s).

NOTE: An original sentence is not valid without an order for victim restitution.

RESTITUTION ORDER:

☒ It is requested that a "To Be Determined" order be imposed, pursuant to PC section 1202.4(f), and the court shall maintain jurisdiction over the final restitution amount. The requested amounts do **not** include out-of-pocket losses the victim may have incurred as a direct result of the crime for property loss or any other expenses which were not covered by the VOC Program.

☒ Expenses awarded by VCB: \$5,000.00

The restitution order should be a civil judgment pursuant to PC section 1202.4(i) and may be collected by the victim, Alameda County, or the Victim Compensation Board on behalf of the victim. Restitution payments on behalf of a victim should be forwarded to the VCB to the extent the victim has received assistance from the VOC Program. Please contact me at (510) 271-5188, in advance of sentencing for an update of these expenses.

The goal of the VCB is to provide the court with these figures at the time of sentencing so that a restitution order can be put in place before reimbursement of these expenses and that a restitution fine commensurate with the severity of the crime will be ordered. Restitution payments on behalf of a victim shall be forwarded to the State Restitution Fund to the extent the victim has received assistance from the VOC Program.

RESTITUTION FINE

PC section 1202.4(b)-

Felony: \$200-\$10,000

Misdemeanor: \$100-\$1,000

☒ Please request a restitution fine for every adult offender which is commensurate with the severity of the crime. The following formula is statutorily permissible and may be used to determine the appropriate restitution fine for offenders sentenced to prison or granted probation: **\$200 X years sentenced x felony counts**

Please call me immediately, if you feel the victim's involvement lead up to the events of the crime **OR** if the victim is not cooperating with the prosecution of the defendant.

• MORE

02/13/02
16:32:44

CALIFORNIA STATE BOARD OF CONTROL
Revenue Management Screen

Program: VCFINSP2

PAGE: 1

Financial Detail for Victims of Crime Program
Claim Number 608643

ENTERED CLAIM NUMBER: 608643

Victim Name: WILLIAM B ANDERSON

Claimant Name: SAMUEL M ANDERSON

000279

Provider: ALAMEDA CO VW FB EMER FUND

Amount Billed	Paid Provider	Paid Claimant	Amount Pending	Service Start	Service End	Hearing Date	Issued Date	Sta tus
5492.38	2992.38	569.62	0.00	07-21-00		07-28-00	07-28-00	PRC
1438.00	1438.00	0.00	0.00	07-21-00		07-28-00	07-28-00	PRC

. MORE
02/13/02
16:32:55

CALIFORNIA STATE BOARD OF CONTROL
Revenue Management Screen

Program: VCFINSP2
PAGE: 1

Financial Summary for Victims of Crime Program
Claim Number 608643

Victim Name WILLIAM B ANDERSON
Claimant Name SAMUEL M ANDERSON

000280

```
***** Summary For Claim 608643 *****
Total paid by VOC on this claim:          $ 5,000.00
VOC Benefits pending to be Paid:          $    0.00
-----
Total paid and pending to be paid:        $ 5,000.00
***** END OF DATA *****
```


RENE DAVIDSON COURTHOUSE

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
CLERKS DOCKET AND MINUTES

C00281

KILGORE, IVAN

DEPT. 011 CRT. DATE/TIME 9/27/02 10:00

EVENT
NAME

KILGORE, IVAN DAWNELL

RPT. NO. 00-64017 DOCK NO. 141033

PROC. DES COUNTS CEN. 0373689 PFN. BBV550 A DAY 11/01/00 SJ DATE 4/07/03
PIC 00S00 AAG-OPD ACITY 0A

CHARGES 1)F187 SC&USE PC 1 PR

STAT SET BAIL \$0.00 TOTAL DAYS IN CUSTODY: 694

BAIL STAT. BOND DT. BOND CO. DOB 05/05/75

BAIL STAT. BOND DT. BOND CO. BAC

FINE/REST. DATE PAID REC. NO. NORTH 1 TIME WAIVED

PROCEEDING

JUDGE JON ROLEFSON

DEP. D.A.

Richard Moore

DEP. CLERK MARGARET TAKEDA/WOSEN MENGISTE

DEF. ATTY. DEBORAH LEVY

REPORTER LISA HODGES NR

OTHERS

☐ Not Present

Defendant: ☐ Present ☐ Not Present ☐ Excused ☒ In Custody ☐ Pro Per

☐ Interpreter _____ is present. Language spoken: _____

☐ Defendant duly arraigned/advised as to constitutional rights ☐ Defendant waives arraignment ☐ Waiver of Rights filed

☐ Defendant served: ☐ Complaint ☐ Discovery ☐ Petition ☐ Motion ☐ Protective Order (PC 136.2)

☐ Referred to Public Defender ☐ Public Defender files conflict ☐ Financially ineligible ☐ Private counsel appointed

☐ Plea Withdrawn ☐ Change of Plea ☐ Plea to count(s) _____ ☐ Not Guilty ☐ Guilty ☐ No Contest/Found Guilty

☐ stipulates to: lesser included / reasonably related offense of count(s) _____ to charge(s) _____

☐ me waived for: ☐ Preliminary Examination _____ days ☐ Trial ☐ Sentence ☐ Time not waived ☐ Time waiver withdrawn

☐ **Clauses:** ☐ Stricken ☐ Admitted ☐ Sentencing Purposes Only

☐ **Priors:** ☐ Stricken ☐ Admitted ☐ Denied

☐ **Probation:** ☐ Conditional Sentence: ☐ Granted for _____ years/months ☐ See attached conditions

☐ Revoked ☐ Restored ☐ Modified ☐ Extended to _____ ☐ Continue on same terms and conditions ☐ Terminated

☐ Defendant admits probation violation ☐ Previous order revoking probation vacated, set aside, defendant restored to probation

☐ Submit to search and seizure of person, residence, vehicle or any property under defendant's control _____

☐ No contact with / not to annoy _____, directly or indirectly: stay at least _____ away

☐ Additional order(s): _____

☐ Petition/Motion _____ ☐ Granted ☐ Denied ☐ Withdrawn

☐ Referred to: ☐ Probation Dept. ☐ Financial Hearing Officer ☐ _____

☐ **Restitution:** ☐ Referred to _____ for Determination ☐ Ordered ☐ Reserved ☐ Modified

☐ Bail Forfeited ☐ Bail Forfeiture Set Aside ☐ Bail Reinstated ☐ Bail Exonerated ☐ Summary Judgment Entered

☐ **Bench Warrant:** ☐ Issued ☐ Withheld ☐ Withdrawn ☐ Bail Set at \$ _____ ☐ No Cite Release ☐ Night Service

2X CERT-CRT:WMM

nt Date: _____ Time: _____ Dept. _____ Proc.: _____ Date: _____ Time: _____ Dept. _____ Proc.: _____

Codes: _____

DOCKET
NAME

KILGORE, IVAN DAWNELL

CT. DATE 9/27/02 DOCK NO. 141033

RENE DAVIDSON COURTHOUSE
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
CLERKS DOCKET AND MINUTES

C00282

1. **ST** KILGORE, IVAN DEPT. 011 CRT. DATE/TIME 11/01/02 10:00
 2. **EVENT NAME** KILGORE, IVAN DAWNELL RPT. NO. 00-64017 DOCK NO. 141033
 3. **PROC.** DES CEN. 0373689 PFN. BBV550 A DAY 11/01/00 SJ DATE 5/12/03
COUNTS PIC 00S00 AAG-OPD ACITY 0A
 4. **CHARGES** 1)F187 SC&USE PC 1 PR

STAT SET BAIL \$0.00 TOTAL DAYS IN CUSTODY: 729
 5. **BAIL** STAT. BOND DT. BOND CO. DOB 05/05/75
 BAIL STAT. BOND DT. BOND CO. BAC
 6. **FINE/REST.** DATE PAID REC. NO. NORTH 1 TIME WAIVED W

PROCEEDING

7. **JUDGE** JON ROLEFSON DCCO: Richard Moore
 8. **DEP. CLERK** MARGARET TAKEDA/WOSEN MENGISTE DEP. D.A. DEBORAH LEVY
 9. **REPORTER** LISA HODGES DEF. ATTY. DEBORAH LEVY ☐ Not Present
 OTHERS

Defendant: ☒ Present ☐ Not Present ☐ Excused ☒ In Custody ☐ Pro Per
☐ Interpreter is present. Language spoken: _____
☐ Defendant duly arraigned/advised as to constitutional rights ☐ Defendant waives arraignment ☐ Waiver of Rights filed
☐ Defendant served: ☐ Complaint ☐ Discovery ☐ Petition ☐ Motion ☐ Protective Order (PC 136.2)
☐ Referred to Public Defender ☐ Public Defender files conflict ☐ Financially ineligible ☐ Private counsel appointed
☐ Plea Withdrawn ☐ Change of Plea ☐ Plea to count(s) ☐ Not Guilty ☐ Guilty ☐ No Contest/Found Guilt
☐ Stipulates to: lesser included / reasonably related offense of count(s) to charge(s)
 Time waived for: ☐ Preliminary Examination days ☐ Trial ☐ Sentence ☐ Time not waived ☐ Time waiver withdrawn
☐ **Clauses:** ☐ Stricken ☐ Admitted ☐ Sentencing Purposes Only
☐ **Priors:** ☐ Stricken ☐ Admitted ☐ Denied
☐ **Probation:** ☐ **Conditional Sentence:** ☐ Granted for years/months ☐ See attached conditions
☐ Revoked ☐ Restored ☐ Modified ☐ Extended to ☐ Continue on same terms and conditions ☐ Terminated
☐ Defendant admits probation violation ☐ Previous order revoking probation vacated, set aside, defendant restored to probation
☐ Submit to search and seizure of person, residence, vehicle or any property under defendant's control
☐ No contact with / not to annoy, directly or indirectly: stay at least away
☐ Additional order(s):
☐ Petition/Motion ☐ Granted ☐ Denied ☐ Withdrawn
☐ Referred to: ☐ Probation Dept. ☐ Financial Hearing Officer
Restitution: ☐ Referred to for Determination ☐ Ordered ☐ Reserved ☐ Modified
☐ Bail Forfeited ☐ Bail Forfeiture Set Aside ☐ Bail Reinstated ☐ Bail Exonerated ☐ Summary Judgment Entered
☐ **Bench Warrant:** ☐ Issued ☐ Withheld ☐ Withdrawn ☐ Bail Set at \$ ☐ No Cite Release ☐ Night Service

2X CERT-CRT:WWM

FUTURE COURT DATES: 12/02/02 JT Vacate

Date: 1-13-03 Time: 9:30 Dept. 11 Proc.: JT Date: Time: Dept. Proc.:

JS Codes:

DOCKET NAME KILGORE, IVAN DAWNELL CT. DATE 11/01/02 DOCK NO. 141033

RENE DAVIDSON COURTHOUSE

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
CLERKS DOCKET AND MINUTES

000283

KILGORE, IVAN

DEPT. 011 CRT. DATE/TIME 1/13/03 09:30

EVENT NAME KILGORE, IVAN DAWNELL

RPT. NO. 00-64017 DOCK NO. 141033

PROC. JT CEN. 0373689 PFN. BBV550 A DAY 11/01/00 SJ DATE 7/22/03
COUNTS PIC 00S00 AAG-OPD ACITY OA

CHARGES 1)F187 SC&USE PC 1 PR

STAT SET BAIL \$0.00 TOTAL DAYS IN CUSTODY: 800

BAIL STAT. BOND DT. BOND CO. DOB 05/05/75

BAIL STAT. BOND DT. BOND CO. BAC

FINE/REST. DATE PAID REC. NO. NORTH 1 TIME WAIVED TW

PROCEEDING

JUDGE JON ROLEFSON

DEP. CLERK MARGARET TAKEDA/~~WOSEN MENGISTE~~

REPORTER LISA HODGES

DCCO: Richard Moore

DEP. D.A. DEBORAH LEVY

DEF. ATTY.

☐ Not Present

Defendant: ☐ Present ☒ Not Present ☐ Excused ☒ In Custody ☐ Pro Per

☐ Interpreter is present. Language spoken: _____

☐ Defendant duly arraigned/advised as to constitutional rights ☐ Defendant waives arraignment ☐ Waiver of Rights filed

☐ Defendant served: ☐ Complaint ☐ Discovery ☐ Petition ☐ Motion ☐ Protective Order (PC 136.2)

☐ Referred to Public Defender ☐ Public Defender files conflict ☐ Financially ineligible ☐ Private counsel appointed

☐ Plea Withdrawn ☐ Change of Plea ☐ Plea to count(s) ☐ Not Guilty ☐ Guilty ☐ No Contest/Found Guilty

☐ Stipulates to: lesser included / reasonably related offense of count(s) _____ to charge(s) _____

Time waived for: ☐ Preliminary Examination _____ days ☐ Trial ☐ Sentence ☐ Time not waived ☒ Time waiver withdrawn

☐ **Clauses:** ☐ Stricken ☐ Admitted ☐ Sentencing Purposes Only

☐ **Priors:** ☐ Stricken ☐ Admitted ☐ Denied

☐ **Probation:** ☐ Conditional Sentence: ☐ Granted for _____ years/months ☐ See attached conditions

☐ Revoked ☐ Restored ☐ Modified ☐ Extended to _____ ☐ Continue on same terms and conditions ☐ Terminated

☐ Defendant admits probation violation ☐ Previous order revoking probation vacated, set aside, defendant restored to probation

☐ Submit to search and seizure of person, residence, vehicle or any property under defendant's control _____

☐ No contact with / not to annoy _____, directly or indirectly: stay at least _____ away

☐ Additional order(s): _____

☐ Petition/Motion ☐ Granted ☐ Denied ☐ Withdrawn

☐ Referred to: ☐ Probation Dept. ☐ Financial Hearing Officer ☐ _____

☐ **Restitution:** ☐ Referred to _____ for Determination ☐ Ordered ☐ Reserved ☐ Modified

☐ Bail Forfeited ☐ Bail Forfeiture Set Aside ☐ Bail Reinstated ☐ Bail Exonerated ☐ Summary Judgment Entered

☐ **Bench Warrant:** ☐ Issued ☐ Withheld ☐ Withdrawn ☐ Bail Set at \$ _____ ☐ No Cite Release ☐ Night Service

2X CERT-CRT:WWM

(60th day 3-14-03)

Date: 224-03 3-17-03 Time: 00130 Dept. 011 Proc. JT Date: _____ Time: _____ Dept. _____ Proc. _____

S Codes: _____

KILGORE, IVAN DAWNELL

CT. DATE 1/13/03 DOCK NO. 141033

0-401 (REV. 5/01)

RENE DAVIDSON COURTHOUSE

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
CLERKS DOCKET AND MINUTES

000284

KILGORE, IVAN

DEPT. 011

CRT. DATE/TIME 2/05/03 09:30

EVENT NAME KILGORE, IVAN DANNELL

RPT. NO. 00-64017

DOCK NO. 141033

PROC. MARMO
COUNTS

CEN. 0373689

PFN. BBV550 A DAY 11/01/00 SJ DATE 8/14/03
PIC 00S00 AAG-OPD ACITY DA

CHARGES 1)F187 SC&USE PC 1 PR

STAT SET BAIL \$0.00 TOTAL DAYS IN CUSTODY: 825

BAIL	STAT.	BOND DT.	BOND CO.	DOB	05/05/75
BAIL	STAT.	BOND DT.	BOND CO.	BAC	
FINE/REST.	DATE PAID	REC. NO. NORTH 1	TIME WAIVED	NTW	3/14/03

PROCEEDING

DCCO:

JUDGE JON ROLEFSON
 DEP. CLERK MARGARET TAKEDA/WOSEN MENGISTE
 REPORTER LISA HODGES NR

DEP. D.A. Richard Moore
 DEF. ATTY. DEBORAH LEVY
 OTHERS

☐ Not Present

Defendant: ☐ Present ☒ Not Present ☐ Excused ☒ In Custody ☐ Pro Per

☐ Interpreter _____ is present. Language spoken: _____

☐ Defendant duly arraigned/advised as to constitutional rights ☐ Defendant waives arraignment ☐ Waiver of Rights filed

☐ Defendant served: ☐ Complaint ☐ Discovery ☐ Petition ☐ Motion ☐ Protective Order (PC 136.2)

☐ Referred to Public Defender ☐ Public Defender files conflict ☐ Financially ineligible ☐ Private counsel appointed

☐ Plea Withdrawn ☐ Change of Plea ☐ Plea to count(s) _____ ☐ Not Guilty ☐ Guilty ☐ No Contest/Found Guilty

☐ Stipulates to: lesser included / reasonably related offense of count(s) _____ to charge(s) _____

☐ me waived for: ☐ Preliminary Examination _____ days ☐ Trial ☐ Sentence ☐ Time not waived ☐ Time waiver withdrawn

☐ **Issues:** ☐ Stricken ☐ Admitted ☐ Sentencing Purposes Only

☐ **Priors:** ☐ Stricken ☐ Admitted ☐ Denied

☐ **Probation:** ☐ Conditional Sentence: ☐ Granted for _____ years/months ☐ See attached conditions

☐ ☐ Revoked ☐ Restored ☐ Modified ☐ Extended to _____ ☐ Continue on same terms and conditions ☐ Terminated

☐ Defendant admits probation violation ☐ Previous order revoking probation vacated, set aside, defendant restored to probation

☐ Submit to search and seizure of person, residence, vehicle or any property under defendant's control _____

☐ No contact with / not to annoy _____, directly or indirectly: stay at least _____ away

☐ Additional order(s): _____

☐ Petition/Motion _____ ☐ Granted ☐ Denied ☐ Withdrawn

☐ Referred to: ☐ Probation Dept. ☐ Financial Hearing Officer ☐ _____

Restitution: ☐ Referred to _____ for Determination ☐ Ordered ☐ Reserved ☐ Modified

☐ Bail Forfeited ☐ Bail Forfeiture Set Aside ☐ Bail Reinstated ☐ Bail Exonerated ☐ Summary Judgment Entered

☐ **Bench Warrant:** ☐ Issued ☐ Withheld ☐ Withdrawn ☐ Bail Set at \$ _____ ☐ No Cite Release ☐ Night Service

2X CERT-CRT:WWM

POC

△ Med Scratch

FUTURE COURT DATES: 2/24/03 JT

nt: Date: 2-11-03 Time: 9:30 Dept. 11 Proc.: MARMO Date: _____ Time: _____ Dept. _____ Proc.: _____

Codes: _____

DOCKET NAME KILGORE, IVAN DANNELL

CT. DATE 2/05/03 DOCK NO. 141033

RENE DAVIDSON COURTHOUSE

C00285

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
CLERKS DOCKET AND MINUTES

KILGORE, IVAN

DEPT. 011

CRT. DATE/TIME 2/11/03 09:30

EVENT NAME KILGORE, IVAN DAWNELL

RPT. NO. 00-64017

DOCK NO. 141033

PROC. MARMO
COUNTS

CEN. 0373689

PFN. BBV550

A DAY 11/01/00

SJ DATE 8/20/03

PIC 00S00 AAG-OPD ACITY OA

CHARGES 1) F187 SC&USE PC 1 PR

TAT SET BAIL \$0.00

TOTAL DAYS IN CUSTODY: 831

BAIL STAT. BOND DT. BOND CO. DOB 05/05/75

BAIL STAT. BOND DT. BOND CO. BAC

FINE/REST. DATE PAID REC. NO. NORTH 1 TIME WAIVED NTW 3/14/03

PROCEEDING

DCCO:

JUDGE JON ROLEFSON

DEP. CLERK MARGARET TAKEDA/WOSEN MENGISTE

REPORTER LISA HODGES

DEP. D.A.

Richard Moore

DEF. ATTY.

DEBORAH LEVY

OTHERS

☐ Not PresentDefendant: ☐ Present ☒ Not Present ☐ Excused ☒ In Custody ☐ Pro Per☐ Interpreter is present. Language spoken: _____☐ Defendant duly arraigned/advised as to constitutional rights ☐ Defendant waives arraignment ☐ Waiver of Rights filed☐ Defendant served: ☐ Complaint ☐ Discovery ☐ Petition ☐ Motion ☐ Protective Order (PC 136.2)☐ Referred to Public Defender ☐ Public Defender files conflict ☐ Financially ineligible ☐ Private counsel appointed☐ Plea Withdrawn ☐ Change of Plea ☐ Plea to count(s) ☐ Not Guilty ☐ Guilty ☐ No Contest/Found Guilty☐ Stipulates to: lesser included / reasonably related offense of count(s) to charge(s)Time waived for: ☐ Preliminary Examination days ☐ Trial ☐ Sentence ☐ Time not waived ☐ Time waiver withdrawn☐ **Clauses:** ☐ Stricken ☐ Admitted ☐ Sentencing Purposes Only☐ **Priors:** ☐ Stricken ☐ Admitted ☐ Denied☐ **Probation:** ☐ Conditional Sentence: ☐ Granted for years/months ☐ See attached conditions☐ ☐ Revoked ☐ Restored ☐ Modified ☐ Extended to ☐ Continue on same terms and conditions ☐ Terminated☐ Defendant admits probation violation ☐ Previous order revoking probation vacated, set aside, defendant restored to probation☐ Submit to search and seizure of person, residence, vehicle or any property under defendant's control☐ No contact with / not to annoy directly or indirectly: stay at least away☐ Additional order(s):☐ Petition/Motion ☐ Granted ☐ Denied ☐ Withdrawn☐ Referred to: ☐ Probation Dept. ☐ Financial Hearing Officer**Restitution:** ☐ Referred to for Determination ☐ Ordered ☐ Reserved ☐ Modified☐ Bail Forfeited ☐ Bail Forfeiture Set Aside ☐ Bail Reinstated ☐ Bail Exonerated ☐ Summary Judgment Entered☐ **Bench Warrant:** ☐ Issued ☐ Withheld ☐ Withdrawn ☐ Bail Set at \$ ☐ No Cite Release ☐ Night Service

2X CERT-CRT:WMM

POC

Assigned to Dep. 8 Judge Nakahara forthwith for MARMO

FUTURE COURT DATES: 2/24/03 JT

Date: Time: Dept. Proc.: Date: Time: Dept. Proc.:

Codes:

DOCKET NAME KILGORE, IVAN DAWNELL

CT. DATE 2/11/03

DOCK NO. 141033

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
CLERKS DOCKET AND MINUTES

000286

DEPT. B CRT. DATE/TIME 2-11-03
 EVENT NAME KILGORE, IVAN DAWNELL RPT. NO. _____ DOCK NO. 141033
 PROC. MARMO CEN. _____ PFN. _____ A DAY _____ SJ DATE _____
 CHARGES 1) F187 SC & USE

BAIL _____ STAT. _____ BOND DT. _____ BOND CO. _____ DOB _____
 BAIL _____ STAT. _____ BOND DT. _____ BOND CO. _____ BAC _____
 FINE/REST. _____ DATE PAID _____ REC. NO. _____ TIME WAIVED _____

PROCEEDING

JUDGE Vernon Nakahara DEP. D.A. _____
 DEP. CLERK Kristi O'Hern DEF. ATTY. Deborah Levy ☐ Not Present
 REPORTER Connie Parchman OTHERS _____

Defendant: ☒ Present ☐ Not Present ☐ Excused ☒ In Custody ☐ Pro Per
☐ Interpreter _____ is present. Language spoken: _____
☐ Defendant duly arraigned/advised as to constitutional rights ☐ Defendant waives arraignment ☐ Waiver of Rights filed
☐ Defendant served: ☐ Complaint ☐ Discovery ☐ Petition ☐ Motion ☐ Protective Order (PC 136.2)
☐ Referred to Public Defender ☐ Public Defender files conflict ☐ Financially ineligible ☐ Private counsel appointed
☐ Plea Withdrawn ☐ Change of Plea ☐ Plea to count(s) _____ ☐ Not Guilty ☐ Guilty ☐ No Contest/Found Guilty
☐ Stipulates to: lesser included / reasonably related offense of count(s) _____ to charge(s) _____
 Time waived for: ☐ Preliminary Examination _____ days ☐ Trial ☐ Sentence ☐ Time not waived ☐ Time waiver withdrawn
☐ **Clauses:** ☐ Stricken ☐ Admitted ☐ Sentencing Purposes Only
☐ **Priors:** ☐ Stricken ☐ Admitted ☐ Denied
☐ **Probation:** ☐ **Conditional Sentence:** ☐ Granted for _____ years/months ☐ See attached conditions
☐ Revoked ☐ Restored ☐ Modified ☐ Extended to _____ ☐ Continue on same terms and conditions ☐ Terminated
☐ Defendant admits probation violation ☐ Previous order revoking probation vacated, set aside, defendant restored to probation
☐ Submit to search and seizure of person, residence, vehicle or any property under defendant's control _____
☐ No contact with / not to annoy _____, directly or indirectly: stay at least _____ away
☐ Additional order(s): _____
☐ Petition/Motion _____ ☐ Granted ☐ Denied ☐ Withdrawn
☐ Referred to: ☐ Probation Dept. ☐ Financial Hearing Officer ☐ _____
Restitution: ☐ Referred to _____ for Determination ☐ Ordered ☐ Reserved ☐ Modified
☐ Bail Forfeited ☐ Bail Forfeiture Set Aside ☐ Bail Reinstated ☐ Bail Exonerated ☐ Summary Judgment Entered
☐ **Bench Warrant:** ☐ Issued ☐ Withheld ☐ Withdrawn ☐ Bail Set at \$ _____ ☐ No Cite Release ☐ Night Service

MTN DENIED. CT ORDERS THE TRANSCRIPTS OF
this proceeding sealed.

CT. EXH. 1 - MARSDEN MOTION W/ ATTACHMENTS - MARKED FOR I.D.

MTD 2-24-03 IN D-11

Print Date: _____ Time: _____ Dept. _____ Proc.: _____ Date: _____ Time: _____ Dept. _____ Proc.: _____

D. Codes: _____

000287

FILED
ALAMEDA COUNTY

FEB 18 2003

CLERK OF THE SUPERIOR COURT
By Wesley Mengiste Deputy

1 Deborah L. Levy, State Bar #110995
2 360 Grand Avenue #197
3 Oakland, CA. 94610
4 (510) 251-1850
5 Attorney for Mr. Kilgore

6 IN AND FOR THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

7 COUNTY OF ALAMEDA- OAKLAND JUDICIAL DISTRICT

8 THE PEOPLE OF THE STATE OF CALIFORNIA)

NO. 141033

9)

ORDER TO ALLOW INMATE

10 V.)

TO USE PROPERTY

11 IVAN KILGORE)

12 _____/

13 TO: THE ALAMEDA COUNTY SHERIFF, SANTA RITA DETENTION FACILITY-

14

15 GOOD CAUSE APPEARING: IT IS HEREBY ORDERED that Ivan Kilgore (PFN
16 BBV550) be permitted to use a tape player (that does not have a radio, or record function,) with
17 headphones, batteries and 7 labeled audio tapes consisting of labeled witness statements concerning
18 his case. Mr. Kilgore may have these tapes and the player for 35 days from the date of this order.

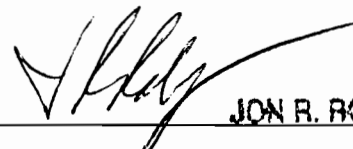
19

20

21

22

23 DATED: 2/18/03



JON R. ROLEFSON

JUDGE OF THE SUPERIOR COURT

24

25

26

27

28

14

000288

FILED
ALAMEDA COUNTY

FEB 24 2003

CLERK OF THE SUPERIOR COURT
By Handa J. Byrne
DEPUTY

1 DEBORAH L. LEVY - State Bar #110995
2 360 Grand Avenue #197
3 Oakland, CA. 94610
4 (510) 251-1850
5 Attorney for Defendant Kilgore

6 IN AND FOR THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

7 IN AND FOR THE COUNTY OF ALAMEDA COUNTY

8 OAKLAND JUDICIAL DISTRICT
9

10 PEOPLE OF THE STATE OF CALIFORNIA)

NO. 141033

11 Plaintiff,)

DEFENSE PROPOSED

12 V.)

WITNESS LIST

13)

14 IVAN KILGORE)

15 Defendant,)

16 _____/

17 1. Halvetia Osborne-Oklahoma

18 2. Betsy Varela- Pittsburg, CA.

19 3. Kevin Tomlinsonn- Morgan Hill, CA.

20 4. Mary Loggins- Oakland, CA.

21 5. Joy Jefferies- San Francisco
22
23
24
25

26 Respectfully Submitted,

27 Deborah L. Levy
28 Deborah L. Levy

000289

FILED
ALAMEDA COUNTY

FEB 24 2003

CLERK OF THE SUPERIOR COURT

By Kanda J. Brown DEPUTY

DEBORAH L. LEVY - State Bar #110995

360 Grand Avenue #197

Oakland, CA. 94610

(510) 251-1850

Attorney for Defendant Kilgore

IN AND FOR THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA COUNTY

OAKLAND JUDICIAL DISTRICT

PEOPLE OF THE STATE OF CALIFORNIA)

NO. 141033

Plaintiff,

)

DEFENSE MOTION TO DISMISS

V.

)

OKLAHOMA PRIOR AS A STRIKE AND TO

)

PROHIBIT USE TO IMPEACH DEFENDANT

IVAN KILGORE)

Defendant,

)

FACTS

In 1997, Mr. Kilgore pled to a first degree voluntary manslaughter, in Oklahoma. Attached as Exhibit A is the Oklahoma definition of 1st degree manslaughter. Attached as Exhibit B is the Judgment and Sentence from that offense. Mr. Kilgore pled to 21 Oklahoma Statutes section 711(1.) Exhibit A shows that 21-711(1) states that a homicide is manslaughter in the first degree if, "perpetrated without a design to effect death by a person while engaged in the commission of a misdemeanor." Exhibit A was taken from the inter-net, at www.Youroklahoma.com. Counsel searched the 1997 statutes (the date of Mr. Kilgore's plea,) and got exhibit A. The statute reads the same for 1998 and 1999.

OKLAHOMA PRIOR CANNOT BE CHARGED AS A STRIKE (NOT A VIOLENT FELONY)

In order for a foreign prior to be considered a serious prior felony in California, it must include all of the elements of the California charge, Penal Code section 667.(a)(1)/and 667.5(f) . Under

California law, voluntary manslaughter is a homicide WITH the intent to kill. If the killing occurs upon a sudden quarrel or heat of passion, in California, that is also voluntary manslaughter. In Oklahoma, killing in the heat of passion is Oklahoma Code 21-711(2.) Mr. Kilgore pled to 21-711(1.) The elements of the Oklahoma statute 21-711(1) are the elements of Involuntary Manslaughter in California. CALJIC 8.45 states that one who unlawfully kills without malice aforethought and WITHOUT AN INTENT TO KILL during the commission of an unlawful act (not amounting to a felony) which is dangerous to human life under the circumstances, is guilty of involuntary manslaughter. Involuntary manslaughter is NOT listed in Penal Code section 667.5 as a "violent felony." Wherefore, the Oklahoma prior cannot be charged as a strike.

OKLAHOMA PRIOR CANNOT BE USED TO IMPEACH DEFENDANT

If Mr. Kilgore testifies, he cannot be impeached with this prior. There is no authority that Involuntary manslaughter is a crime of moral turpitude. In fact, People V. Solis, (1985) 172 CalApp3d 877, 218 Cal Rptr 468 found that it is NOT moral turpitude. In order to determine if the prior is one of moral turpitude, the court is restricted to the least adjudicated elements of the statute of which defendant was convicted, or pled, People V. Crowson (1983) 33 Cal.3d 623, 190 Cal Rptr 165, People V. Castro (1985) 38 Cal.3d 301, 211 Cal. Rptr. 719 and People V. Campbell (1994) 23 Cal App. 4th 1488, 28 Cal. Rptr.2d 716. As stated in part one, the elements of Mr. Kilgore's Oklahoma prior are equal to involuntary manslaughter.

Further, under 352 of the Evidence Code, the defense would state that the prejudice that would accrue to defendant far outweighs any probative value to come from impeaching defendant with this prior. If the court rules that Mr. Kilgore can be impeached with this prior, the defendant would have to re-consider testifying.

Counsel states that the following is true and correct under the laws of perjury of the State of California,

If Mr. Kilgore testifies, he would testify that he was assaulted and robbed by the victim, Will and the victim's friend "T," twice, within the month prior to the charged offense. He would further testify that he was hit on the head with a gun in one of the assaults, and therefore knew that Will and "T" were armed. On the date of the offense he would testify that as he pulled up to

C000290

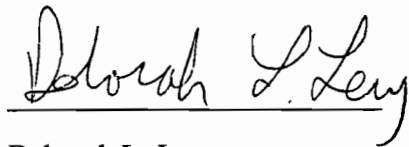
1 the corner of San Pablo and 30th, he saw Mr. Terry Dandy raise his shirt and pull out a weapon.
2 He shot only in self defense, as he knew Terry would shoot.

3 Under People V. Beagle (1972) 6 Cal3d 441, 99 Cal Rptr. 313, and Castro (supra) the defense
4 submits that this prior does NOT reflect on Mr. Kilgore's honesty and veracity and does NOT
5 show moral turpitude. If the court allows this impeachment, Mr. Kilgore would have to seriously
6 consider NOT testifying. The effect of the jury hearing about a prior homicide involving Mr.
7 Kilgore would be devastating. The effect of the jury NOT hearing the testimony of Mr. Kilgore
8 would also create a miscarriage of justice.

9 WHEREFORE, for the above stated reasons, the Oklahoma prior MUST be dismissed as a
10 strike prior, AND cannot be used to impeach Mr. Kilgore.

11
12 DATED: February 23, 2003

13 Respectfully Submitted,

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16 Deborah L. Levy
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28

ISSUED
9-4-97
000291

IN THE DISTRICT COURT OF SEMINOLE COUNTY

STATE OF OKLAHOMA

THE STATE OF OKLAHOMA,)	
PLAINTIFF,)	NO.: <u>CF-95-387</u>
)	
V.)	DOB: <u>05-05-74</u>
)	
<u>IVAN DONWELL KILGORE</u> ,)	SSN: <u>445-68-6188</u>
DEFENDANT.)	

JUDGMENT AND SENTENCE

Now, on this 28TH day of JULY, 1997, this matter comes on before the undersigned Judge, for sentencing and the Defendant, IVAN DONWELL KILGORE, appears personally and by Attorney JACK MATTINGLY, SR., AND JACK MATTINGLY, JR., the State of Oklahoma represented by TIMOTHY L. OLSEN, and the Defendant, having previously:

- (X) Entered a plea of guilty
 () Entered a plea of Nolo Contendere
 () Been found guilty by jury
 () Been found guilty by Judge after waiver of jury trial
 () Other _____

to/of the crime(s) of:

Statutory Reference

Count <u>I</u> :	<u>MANSLAUGHTER, FIRST DEGREE</u>	<u>21</u> O.S. <u>711(1)</u>
Count _____:	_____	_____ O.S. _____
Count _____:	_____	_____ O.S. _____

- () The defendant has previously been convicted of _____ felony crimes and the sentence has been enhanced in accordance with the provisions set forth in _____ O.S. _____; and,

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that the Defendant, IVAN DONWELL KILGORE, is guilty of the above described offenses and is sentenced as follows:

TERM OF IMPRISONMENT

COUNT	SENTENCED TO A TERM OF
<u>I</u>	<u>FOUR (4) YEARS</u>
_____	_____
_____	_____

under the custody and control of:

- (X) Oklahoma Department of Corrections;
 () Seminole County Sheriff; or
 () Other: _____

Exhibit A

[\[Previous\]](#) [\[Next\]](#)

§21-711.

§21-711.

Homicide is manslaughter in the first degree in the following cases:

1. When perpetrated without a design to effect death by a person while engaged in the commission of a misdemeanor.
2. When perpetrated without a design to effect death, and in a heat of passion, but in a cruel and unusual manner, or by means of a dangerous weapon; unless it is committed under such circumstances as constitute excusable or justifiable homicide.
3. When perpetrated unnecessarily either while resisting an attempt by the person killed to commit a crime, or after such attempt shall have failed.

[\[Previous\]](#) [\[Next\]](#)

000293

1 THOMAS J. ORLOFF
 2 District Attorney
 3 County of Alameda
 4 900 Courthouse
 5 1225 Fallon Street
 6 Oakland, CA 94612-4292
 7 (510) 272-6222

8 Darryl A. Stallworth
 9 Deputy District Attorney
 10 [State Bar # 163719]

Trial Date: February 24, 2003

FILED
 ALAMEDA COUNTY

FEB 24 2003

CLERK OF THE SUPERIOR COURT
 By Honda J. Byrne DEPUTY

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 12 **COUNTY OF ALAMEDA**

13 THE PEOPLE OF THE STATE OF CALIFORNIA,)

14 v.

15 IVAN KILGORE

16 Defendant,

) No. 141033

) Department No. 6

17 **People's Witness List**

18 OAKLAND POLICE DEPARTMENT

19 Sgt. Phil Green

20 Sgt. Louis cruz

21 Sgt. Enoch Olivas

22 Sgt. Chris Mufarreh

23 Thomas Vigilienzzone

24 Daniel Hutchinson

25 Patricia Boyle

26 David Hazel

27 Sean Festag

Office of the
 District
 Attorney
 Alameda County
 California

000294

1 Richard Vallergera

2 Hamann Nguyen

3 M. Cross

4 John Fukuda

5 Brian Clifford

6 Kurt Madison

7 E. Gerbaudo

8 Jimmy Wong

9 MEDICAL PERSONAL

10 Dr. Paul Herrmann

11 CIVILIAN WITNESSES

12 Bianca Moore

13 Raymond Jones

14 Terry Dandy

15 Jemarrio Hennen

16 Shanae Anderson

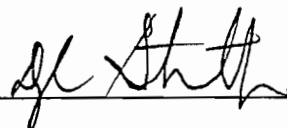
17 Matthew Bryant

18 Stanley Omadhebo

19 Mary Loggins

20 Mary Washington

21 Dorothy Irvin

22
23 Respectfully submitted by: 

24 Deputy District Attorney

25 Darryl Stallworth

February 24, 2003

26 Office of the
District
Attorney
27 meda County
California
28

THOMAS J. ORLOFF
 District Attorney
 County of Alameda
 900 Courthouse
 1225 Fallon Street
 Oakland, CA 94612-4292
 (510) 272-6222

Darryl A. Stallworth
 Deputy District Attorney
 [State Bar # 163719]

Trial Date: Febraury 24, 2003

FILED
 ALAMEDA COUNTY

FEB 24 2003

CLERK OF THE SUPERIOR COURT
 By Nanda J. Brown DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF ALAMEDA**

THE PEOPLE OF THE STATE OF CALIFORNIA,)

v.

IVAN KILGORE

Defendant,

No.141033

Department No. 6

People's Proposed Jury Instructions

- | | |
|------|-----------------------------------------------------------------|
| 1.00 | Respective Duties of Judge and Jury |
| 1.01 | Instructions to be considered as a whole |
| 1.02 | Statements of Counsel–Stipulated facts |
| 1.03 | No independent investigations |
| 1.05 | Juror's use of notes |
| 2.00 | Direct and Circumstantial evidence |
| 2.01 | Sufficiency of Circumstantial evidence |
| 2.02 | Sufficiency of Circumstantial evidence to prove specific intent |
| 2.03 | Consciousness of Guilt |
| 2.04 | Efforts by Defendant to fabricate evidence |
| 2.09 | Evidence limited as to Purpose |

Office of the
District
Attorney
 Alameda County
 California

000296

- 1 2.11 Production of all evidence not required
- 2 2.12 Weighing Transcript Testimony of Unavailable Witness
- 3 2.13 Prior Consistent or Inconsistent Statements as Evidence
- 4 2.20 Believability of Witness
- 5 2.21.1 Discrepancies in Testimony
- 6 2.21.2 Witness Willfully false
- 7 2.22 Weighing Conflicting Testimony
- 8 2.23 Believability of a Witness- Conviction of a Felony
- 9 2.27 Sufficiency of Testimony of One Witness
- 10 2.51 Motive
- 11 2.52 Flight after Crime
- 12 2.80 Expert Testimony
- 13 2.81 Opinion Testimony of Lay Witness
- 14 2.82 Hypothetical Questions
- 15 2.90 Presumption of Innocence-Reasonable Doubt-Burden of Proof
- 16 2.92 Factors to Consider in Proving Identity by Eyewitness Testimony
- 17 8.00 Homicide Defined
- 18 8.10 Murder
- 19 8.11 Malice Aforethought
- 20 8.20 Deliberate and Premeditated

21 **PEOPLE'S PROPOSED SPECIAL JURY INSTRUCTION NO. 1**

22 To prove the killing was "deliberate and premeditated, " it shall not be
 23 necessary to prove the defendant maturely and meaningfully reflected upon the gravity of his
 24 or her act.

25 Authority: Penal Code Section 189 (to be given at the end of CALJIC 8.20)

000297

1		
2	8.30	Second Degree Murder
3	8.71	Doubt Wheter First or Second Degree Murder
4	17.31	All instructions not Necessarily Applicable
5	17.40	Individual Opinion Required
6	17.41	How Jurors should Approach Their Task
7	17.42	Jury Must not Consider Penalty
8	17.43	Jury Deliberations
9	17.50	Concluding Instruction
10	17.52	Separation Admonition
11	17.53	Admonition to Alternate Jurors
12		
13		
14		
15	Dated February 24, 2003	
16		
17		Deputy District Attorney
18		Darryl Stallworth
19		
20		
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Office of the
District
Attorney
ameda County
California

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
CLERKS DOCKET AND MINUTES

000298

DEPT. 006 CRT. DATE/TIME 2/24/03

EVENT NAME KILGORE, IVAN RPT. NO. _____ DOCK NO. 141033

PROC. JT CEN. 0373689 PFN. BBV550 A DAY _____ SJ DATE _____

CHARGES F187 SC + USE PC 1 PR

BAIL _____ STAT. _____ BOND DT. _____ BOND CO. _____ DOB _____

BAIL _____ STAT. _____ BOND DT. _____ BOND CO. _____ BAC _____

FINE/REST. _____ DATE PAID _____ REC. NO. _____ TIME WAIVED _____

PROCEEDING

JUDGE KENNETH KINGSBURY DEP. D.A. DARYL STALLWORTH

DEP. CLERK WANDA BOYNS DEF. ATTY. DEBORAH LEVY ☐ Not Present

REPORTER GERALD DOIRUANN OTHERS _____

Defendant: ☒ Present ☐ Not Present ☐ Excused ☒ In Custody ☐ Pro Per

☐ Interpreter _____ is present. Language spoken: _____

☐ Defendant duly arraigned/advised as to constitutional rights ☐ Defendant waives arraignment ☐ Waiver of Rights filed

☐ Defendant served: ☐ Complaint ☐ Discovery ☐ Petition ☐ Motion ☐ Protective Order (PC 136.2)

☐ Referred to Public Defender ☐ Public Defender files conflict ☐ Financially ineligible ☐ Private counsel appointed

☐ Plea Withdrawn ☐ Change of Plea ☐ Plea to count(s) _____ ☐ Not Guilty ☐ Guilty ☐ No Contest/Found Guilty

☐ Stipulates to: lesser included / reasonably related offense of count(s) _____ to charge(s) _____

Time waived for: ☐ Preliminary Examination _____ days ☐ Trial ☐ Sentence ☐ Time not waived ☐ Time waiver withdrawn

☐ Clauses: ☐ Stricken ☐ Admitted ☐ Sentencing Purposes Only

☐ Priors: ☐ Stricken ☐ Admitted ☐ Denied

☐ Probation: ☐ Conditional Sentence: ☐ Granted for _____ years/months ☐ See attached conditions

☐ Revoked ☐ Restored ☐ Modified ☐ Extended to _____ ☐ Continue on same terms and conditions ☐ Terminated

☐ Defendant admits probation violation ☐ Previous order revoking probation vacated, set aside, defendant restored to probation

☐ Submit to search and seizure of person, residence, vehicle or any property under defendant's control _____

☐ No contact with / not to annoy _____, directly or indirectly: stay at least _____ away

☐ Additional order(s): _____

☐ Petition/Motion _____ ☐ Granted ☐ Denied ☐ Withdrawn

☐ Referred to: ☐ Probation Dept. ☐ Financial Hearing Officer ☐ _____

Restitution: ☐ Referred to _____ for Determination ☐ Ordered ☐ Reserved ☐ Modified

☐ Bail Forfeited ☐ Bail Forfeiture Set Aside ☐ Bail Reinstated ☐ Bail Exonerated ☐ Summary Judgment Entered

☐ Bench Warrant: ☐ Issued ☐ Withheld ☐ Withdrawn ☐ Bail Set at \$ _____ ☐ No Cite Release ☐ Night Service

ont' Date: 02-25-03 Time: 0930 Dept. 06 Proc.: JT Date: _____ Time: _____ Dept. _____ Proc.: _____

C 3 Codes: _____

DOCKET
NAME

CT. DATE

DOCK NO.

RENE DAVIDSON COURTHOUSE

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
CLERKS DOCKET AND MINUTES

C00299

KILGORE, IVAN

DEPT. 011

CRT. DATE/TIME 2/24/03 09:30

EVENT NAME KILGORE, IVAN DAWNELL

RPT. NO. 00-64017

DOCK NO. 141033

PROC. JT COUNTS CEN. 0373689 PFN. BBV550 A DAY 11/01/00 SJ DATE 9/02/03
PIC 00500 AAG-OPD ACITY OA

CHARGES 1)F187 SC&USE PC 1 PR

STAT SET BAIL \$0.00 TOTAL DAYS IN CUSTODY: 842

BAIL STAT. BOND DT. BOND CO. DOB 05/05/75
BAIL STAT. BOND DT. BOND CO. BAC
FINE/REST. DATE PAID REC. NO. NORTH 1 TIME WAIVED NTW 3/14/03

PROCEEDING

DCCO:

JUDGE JON ROLEFSON
DEP. CLERK MARGARET TAKEDA/WOSEN MENGISTE
REPORTER LISA HODGESDEP. D.A. *Richard Moore*
DEF. ATTY. DEBORAH LEVY
OTHERS☐ Not Present

Defendant: ☐ Present ☒ Not Present ☐ Excused ☐ In Custody ☐ Pro Per

☐ Interpreter is present. Language spoken: _____

☐ Defendant duly arraigned/advised as to constitutional rights ☐ Defendant waives arraignment ☐ Waiver of Rights filed

☐ Defendant served: ☐ Complaint ☐ Discovery ☐ Petition ☐ Motion ☐ Protective Order (PC 136.2)

☐ Referred to Public Defender ☐ Public Defender files conflict ☐ Financially ineligible ☐ Private counsel appointed

☐ Plea Withdrawn ☐ Change of Plea ☐ Plea to count(s) ☐ Not Guilty ☐ Guilty ☐ No Contest/Found Guilty

☐ Stipulates to: lesser included / reasonably related offense of count(s) to charge(s)

ime waived for: ☐ Preliminary Examination days ☐ Trial ☐ Sentence ☐ Time not waived ☐ Time waiver withdrawn

l. **Clauses:** ☐ Stricken ☐ Admitted ☐ Sentencing Purposes Only

Priors: ☐ Stricken ☐ Admitted ☐ Denied

Probation: ☐ Conditional Sentence: ☐ Granted for years/months ☐ See attached conditions

☐ Revoked ☐ Restored ☐ Modified ☐ Extended to ☐ Continue on same terms and conditions ☐ Terminated

☐ Defendant admits probation violation ☐ Previous order revoking probation vacated, set aside, defendant restored to probation

☐ Submit to search and seizure of person, residence, vehicle or any property under defendant's control

☐ No contact with / not to annoy, directly or indirectly: stay at least away

☐ Additional order(s):

☐ Petition/Motion ☐ Granted ☐ Denied ☐ Withdrawn

☐ Referred to: ☐ Probation Dept. ☐ Financial Hearing Officer

Restitution: ☐ Referred to for Determination ☐ Ordered ☐ Reserved ☐ Modified

☐ Bail Forfeited ☐ Bail Forfeiture Set Aside ☐ Bail Reinstated ☐ Bail Exonerated ☐ Summary Judgment Entered

Bench Warrant: ☐ Issued ☐ Withheld ☐ Withdrawn ☐ Bail Set at \$ ☐ No Cite Release ☐ Night Service

2X CERT-CRT:WWM PDC

assigned to D-6 Judge Langley FW for JT

nt: Date: Time: Dept. Proc.: Date: Time: Dept. Proc.:

Codes:

DOCKET NAME

KILGORE, IVAN DAWNELL

CT. DATE 2/24/03

DOCK NO. 141033

FILED
ALAMEDA COUNTY

FEB 25 2003

CLERK OF THE SUPERIOR COURT

By Handa G. Bayne
DEPUTY

1 Deborah L. Levy, State Bar #110995

2 360 Grand Avenue #197

3 Oakland, CA. 94610

4 (510) 251-1850

5 Attorney for Mr. Ivan Kilgore

6 IN AND FOR THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

7 COUNTY OF ALAMEDA- OAKLAND JUDICIAL DISTRICT

8
9 PEOPLE OF THE STATE OF CALIFORNIA)

NO. 141033

10)
11 Plaintiff,)

PROPOSED JURY QUESTIONNAIRE

12 IVAN KILGORE)

QUESTIONS

13 Defendant)

14)
15 SUPPLEMENTAL VOIR DIRE:16 2. This case involves a shooting that occurred on 7/16/00 in the area of 30th Street and San Pablo
17 Avenue, in the city of Oakland on or about 6:00 p.m. in which William Anderson was killed. Do
18 you think that you have heard or read anything about this case? ____ Yes ____ No

19 If yes, from what source (newspaper, friends, radio, T.V.?) _____

20
21 What do you remember hearing about this case?
22 _____
23 _____
24 _____25 3. Have you, a family member or a friend ever been injured by a firearm or had a bad experience
26 with a firearm? YES ____ NO ____27 Have you ever fired a firearm? YES ____ NO ____
28

1 4. Have you ever been in fear of being assaulted or killed? YES _____ NO _____

2 If yes, can you briefly explain

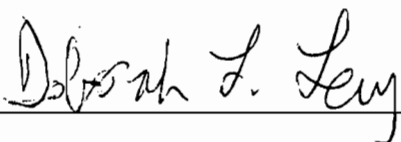
3 _____
4 _____
5 _____

6
7 5. In general, what are your feelings about the criminal justice
8 system? _____

9 _____
10 _____
11 _____

12 DATED: 2/23/03

13
14 Respectfully Submitted,

15
16 
17 _____

18
19 Deborah L. Levy

000302
FILED
ALAMEDA COUNTY

FEB 25 2003

CLERK OF THE SUPERIOR COURT
By Honda J. Brown
DEPUTY

1 Deborah L. Levy, State Bar #110995

2 360 Grand Avenue #197

3 Oakland, CA. 94610

4 (510) 251-1850

5 Attorney for Mr. Ivan Kilgore

6 IN AND FOR THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

7 COUNTY OF ALAMEDA- OAKLAND JUDICIAL DISTRICT

9 PEOPLE OF THE STATE OF CALIFORNIA)

NO. 141033

11 Plaintiff,)

ORDER FOR TWO SETS OF CLOTHES

12 IVAN KILGORE)

TO BE KEPT FOR INMATE DURING

13 Defendant)

JURY TRIAL

15 TO THE ALAMEDA COUNTY SHERIFF'S OFFICE, SANTA RITA DETENTION FACILITY:

17 GOOD CAUSE APPEARING: IT IS HEREBY ORDERED THAT Ivan Kilgore, PFN BBV550 be
18 permitted to have two sets of clothes at Santa Rita jail to wear for his jury trial, which is currently
19 in session.

21 DATED: Feb. 25, 2003

26 THE HONORABLE JUDGE KINGSBURY

RENE DAVIDSON COURTHOUSE

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
CLERKS DOCKET AND MINUTES

C00303

KILGORE, IVAN DEPT. 006 CRT. DATE/TIME 2/25/03 09:30
 KILGORE, IVAN DAWNELL RPT. NO. 00-64017 DOCK NO. 141033
 JT CEN. 0373689 PFN. BEV550 A DAY 11/01/00 SJ DATE 9/03/03
 COUNTS PIC 00500 AAB-OPD ACITY 0A
 CHARGES 1)F1B7 SC&USE PC 1 PR

STAT SET BAIL \$0.00 TOTAL DAYS IN CUSTODY: 847
 BAIL STAT. BOND DT. BOND CO. DOB 05/05/75
 BAIL STAT. BOND DT. BOND CO. BAC
 FINE/REST. DATE PAID REC. NO. NORTH 1 TIME WAIVED NTW 3/14/03

PROCEEDING

DOCCO:

JUDGE KENNETH KINGSBURY DEP. D.A. DARRYL STALLWORTH
 DEP. CLERK WANDA BOYNS DEF. ATTY. DEBORAH LEVY
 REPORTER GERALD DOHRMANN OTHERS ☐ Not Present

Defendant: ☒ Present ☐ Not Present ☐ Excused ☒ In Custody ☐ Pro Per
☐ interpreter is present. Language spoken: _____
☐ Defendant duly arraigned/advised as to constitutional rights ☐ Defendant waives arraignment ☐ Waiver of Rights filed
☐ Defendant served: ☐ Complaint ☐ Discovery ☐ Petition ☐ Motion ☐ Protective Order (PC 136.2)
☐ Referred to Public Defender ☐ Public Defender files conflict ☐ Financially ineligible ☐ Private counsel appointed
☐ Plea Withdrawn ☐ Change of Plea ☐ Plea to count(s) ☐ Not Guilty ☐ Guilty ☐ No Contest/Found Guilty
☐ Stipulates to: lesser included / reasonably related offense of count(s) to charge(s)
 me waived for: ☐ Preliminary Examination days ☐ Trial ☐ Sentence ☐ Time not waived ☐ Time waiver withdrawn
☐ **Clauses:** ☐ Stricken ☐ Admitted ☐ Sentencing Purposes Only
☐ **Priors:** ☐ Stricken ☐ Admitted ☐ Denied
☐ **Probation:** ☐ Conditional Sentence: ☐ Granted for years/months ☐ See attached conditions
☐ Revoked ☐ Restored ☐ Modified ☐ Extended to ☐ Continue on same terms and conditions ☐ Terminated
☐ Defendant admits probation violation ☐ Previous order revoking probation vacated, set aside, defendant restored to probation
☐ Submit to search and seizure of person, residence, vehicle or any property under defendant's control
☐ No contact with / not to annoy, directly or indirectly: stay at least away
☐ Additional order(s):
☐ Petition/Motion ☐ Granted ☐ Denied ☐ Withdrawn
☐ Referred to: ☐ Probation Dept. ☐ Financial Hearing Officer
Restitution: ☐ Referred to for Determination ☐ Ordered ☐ Reserved ☐ Modified
☐ Bail Forfeited ☐ Bail Forfeiture Set Aside ☐ Bail Reinstated ☐ Bail Exonerated ☐ Summary Judgment Entered
☐ **Bench Warrant:** ☐ Issued ☐ Withheld ☐ Withdrawn ☐ Bail Set at \$ ☐ No Cite Release ☐ Night Service
 2X CERT-CRT:WWM

Print Date: 2-27-03 Time: 0930 Dept. 06 Proc.: JT Date: Time: Dept. Proc.:

Codes:

DOCKET NAME KILGORE, IVAN DAWNELL CT. DATE 2/25/03 DOCK NO. 141033

000304

(7/00)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Dept. No. 006

Date: **February 25, 2003**Hon. **KENNETH R. KINGSBURY**, Judge

Wanda Boyns, Dep.Clk.

Gerald Dohrmann, Reporter

THE PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff

vs.

IVAN KILGORE

Defendant

Counsel appearing
for PlaintiffDarryl Stallworth, Deputy
District AttorneyCounsel appearing
for Defendant

Deborah Levy, Esq

NATURE OF PROCEEDINGS:

PRE-TRIAL

Case No. **141033**PFN: **BBV550**CEN: **0373689**

Above entitled action comes on calendar this date having been continued from February 24, 2003 for jury trial.

9:32 a.m. Respective counsel and defendant are present. Questions for the supplemental questionnaire are discussed. Court and counsel discuss the clauses of the defendant as currently listed in the Information.

9:47 a.m. The defendant's oral Motion to Bifurcate the Prior Conviction is granted.

10:00 a.m. Court is in recess until 2:00 p.m. this afternoon.

2:13 p.m. All parties are once again present and the questionnaire to be given to the jury is discussed.

2:28 p.m. Court is in recess for the evening with the parties ordered to return on February 27, 2003 at 9:30 a.m. for jury trial.

RENE DAVIDSON CCURTHOUSE
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
CLERKS DOCKET AND MINUTES

000305

1. **KILGORE, IVAN** DEPT. 006 CRT. DATE/TIME 2/27/03 09:30

2. **KILGORE, IVAN DAWNELL** RPT. NO. 00-64017 DOCK NO. 141033

3. PROC. **JT** CEN. 0373689 PFN. **BBV550** A DAY 11/01/00 SJ DATE 9/05/03
COUNTS PIC 00S00 AAG-CPD ACITY CA

4. CHARGES **1)F187 SC&USE PC 1 PR**

STAT SET BAIL \$0.00 TOTAL DAYS IN CUSTODY: 847

5. BAIL STAT. BOND DT. BOND CO. DOB 05/05/75
BAIL STAT. BOND DT. BOND CO. BAC
6. FINE/REST. DATE PAID REC. NO. **NORTH 1** TIME WAIVED NTW 3/14/03

PROCEEDING

DCCO:

7. JUDGE **KENNETH KINGSBURY**

DEP. D.A. **DARRYL STALLWORTH**

3. DEP. CLERK **WANDA BCYNS**

DEF. ATTY. **DEBORAH LEVY**

3. REPORTER **GERALD DOHRMANN**

OTHERS

☐ Not Present

Defendant: ☒ Present ☐ Not Present ☐ Excused ☒ In Custody ☐ Pro Per

☐ Interpreter is present. Language spoken: _____

☐ Defendant duly arraigned/advised as to constitutional rights ☐ Defendant waives arraignment ☐ Waiver of Rights filed

☐ Defendant served: ☐ Complaint ☐ Discovery ☐ Petition ☐ Motion ☐ Protective Order (PC 136.2)

☐ Referred to Public Defender ☐ Public Defender files conflict ☐ Financially ineligible ☐ Private counsel appointed

☐ Plea Withdrawn ☐ Change of Plea ☐ Plea to count(s) ☐ Not Guilty ☐ Guilty ☐ No Contest/Found Guilty

☐ Stipulates to: lesser included / reasonably related offense of count(s) to charge(s)

Time waived for: ☐ Preliminary Examination days ☐ Trial ☐ Sentence ☐ Time not waived ☐ Time waiver withdrawn

Clauses: ☐ Stricken ☐ Admitted ☐ Sentencing Purposes Only

Priors: ☐ Stricken ☐ Admitted ☐ Denied

Probation: ☐ Conditional Sentence: ☐ Granted for years/months ☐ See attached conditions

☐ Revoked ☐ Restored ☐ Modified ☐ Extended to ☐ Continue on same terms and conditions ☐ Terminated

☐ Defendant admits probation violation ☐ Previous order revoking probation vacated, set aside, defendant restored to probation

☐ Submit to search and seizure of person, residence, vehicle or any property under defendant's control

☐ No contact with / not to annoy, directly or indirectly: stay at least away

☐ Additional order(s):

☐ Petition/Motion ☐ Granted ☐ Denied ☐ Withdrawn

☐ Referred to: ☐ Probation Dept. ☐ Financial Hearing Officer

Restitution: ☐ Referred to for Determination ☐ Ordered ☐ Reserved ☐ Modified

☐ Bail Forfeited ☐ Bail Forfeiture Set Aside ☐ Bail Reinstated ☐ Bail Exonerated ☐ Summary Judgment Entered

☐ Bench Warrant: ☐ Issued ☐ Withheld ☐ Withdrawn ☐ Bail Set at \$ ☐ No Cite Release ☐ Night Service

2X CERT-CRT:WMM

ont: Date: 3-3-03 Time: 0930 Dept. 06 Proc.: JT Date: 3-4-03 Time: 0930 Dept. 06 Proc.: JT

C Codes:

DOCKET
NAME

KILGORE, IVAN DAWNELL

CT. DATE 2/27/03 DOCK NO. 141033

000306

(7/00)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Dept. No. 006

Date: **February 27, 2003**

Hon. **KENNETH R. KINGSBURY**, Judge

Wanda Boyns, Dep. Clk.
Gerald Dohrmann, Reporter

THE PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff

vs.

IVAN KILGORE

Defendant

Counsel appearing
for Plaintiff

Darryl Stallworth, Deputy
District Attorney

Counsel appearing
for Defendant

Deborah Levy, Esq

NATURE OF PROCEEDINGS:

JURY TRIAL

Case No. **141033**

PFN: **BBV550**

CEN: **0373689**

Above entitled action comes on calendar this date having been continued from February 25, 2003 for jury trial

10:12 a.m. Respective counsel and defendant are present; the issue of the defendant's prior conviction from Okalahoma is discussed.

10:30 a.m. The first panel of prospective jurors is present and sworn on voir dire. The Court introduces the cause and the parties.

11:15 a.m. The questionnaires are given to the prospective jurors. All prospective jurors with hardship requests are ordered to return on March 3, 2003 at 2:00 p.m. in Department 6. Those prospective jurors without hardship requests are ordered to return on March 4, 2003 at 9:30 a.m. for jury selection.

11:20 a.m. Court is in recess until 1:30 p.m. for the arrival of the second panel of prospective jurors.

1:53 p.m. Respective counsel and defendant are present to discuss a hardship request from the morning panel. A second panel of prospective jurors is sworn on voir dire. The Court introduces the cause and the parties.

2:58 p.m. Questionnaires are given to the prospective jurors for completion. All prospective jurors with no hardship requests are ordered to return on March 4, 2003 at 9:30 a.m. for jury selection. Those prospective jurors with hardship requests are ordered to return on March 3, 2003 at 2:00 p.m. in Department 6.

3:00 p.m. Court is in recess on this matter until March 3, 2003 at 2:00 p.m. for further trial.

600307
FILED
 ALAMEDA COUNTY

FEB 28 2003

CLERK OF THE SUPERIOR COURT
 By Wanda J. Brown DEPUTY

1 DEBORAH L. LEVY - State Bar #110995

2 360 Grand Avenue #197

3 Oakland, CA. 94610

4 (510) 251-1850

5 Attorney for Defendant Kilgore

6 IN AND FOR THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

7 COUNTY OF ALAMEDA - OAKLAND JUDICIAL DISTRICT

8 PEOPLE OF THE STATE OF CALIFORNIA) NO. 141033

9 Plaintiff,) DEFENSE MOTION TO EXCLUDE

10 V.) WITNESS'S TRIAL TESTIMONY

11 IVAN KILGORE)

12 Defendant,)

13 _____/

14 **FACTS**

15 The defense believes the facts will show that prosecution witness, Raymond Jones, made a
 16 coerced statement to the Oakland police. The offense charged in this case occurred on 7/16/00 at
 17 around 1747 hours. On 7/17/00, an informant said that Raymond Jones was the one driving the
 18 car that was identified with this shooting. Mr. Jones was arrested on 7/17/00 at around 1815
 19 hours. He was placed in an interview room at 1845. At 1915 the officers came in and spoke with
 20 Mr. Jones until 2159, 2 hours and 44 minutes, off tape. He was informed that he had been
 21 arrested for the murder that is charged in this case against Mr. Kilgore. For three hours he lied to
 22 the police and said that he didn't know anything. At 2211, the investigating officers re-entered
 23 the room and spoke with Mr. Jones again for 56 minutes. They left at 2307. The officers
 24 returned and took a taped statement at 2246 until 2307 (see Exhibit A.) The officers told Mr.
 25 Jones that he could get 25-life for murder. They asked him if he was going to be a witness or a
 26 defendant (Preliminary hearing transcript, Vol. III p.98-102.)

27 Although Mr. Jones was arrested for murder, the D.A. declined to charge, and Mr. Jones was
 28 released on 7/18. Mr. Kilgore was charged at the same time.

1 On 11/28/00, Mr. Jones was formally charged with Penal Code section 32 and a declaration in
2 support of an arrest warrant was issued on 11/29/00. A warrant for day or night service was
3 issued on 12/5/00, in the amount of \$15,000.00 bail (see composite Exhibit A.) Mr. Jones turned
4 himself into custody.

5 POINTS & AUTHORITIES

6 Defendant has standing to raise the issue of the voluntariness of Jones' statements since they
7 were obtained through coercive means. (See *People v. Varnum* (1967) 66 Cal.2d 808, 812-813
8 [59 Cal.Rptr. 108, 427 P.2d 772]; *People v. Jones* (1980) 105 Cal.App.3d 572, 581 [164
9 Cal.Rptr. 605].)

10 In People V. Jones (supra) the court examined California law and found that the burden is
11 on the prosecution to prove, beyond a reasonable doubt, that a confession is voluntary and NOT
12 the results of any promises of reward or leniency.

13 "Officer Duff qualified his request by making it clear that they (the police) were interested
14 in only the truth. Allegedly, Kennedy continued the story by stating: "She wouldn't come in so we
15 picked her up and carried her in." Officer Duff then recollects Mrs. Jones' statement: "Well,
16 maybe Kennedy ought to have a lawyer." It was at this point that Officer Duff explained to Mrs.
17 Jones, "that we were there trying to gather the facts, that we wanted nothing more than the truth,
18 that her son Kennedy was --we believed was involved, and we were just trying to get at the truth.
19 Since she had expressed her desire to have an attorney present, questioning would stop, and we
20 were going to take the subject, place him under arrest and book him." at p. 583.

21 Kennedy, was as Raymond Jones is here, a co-participant in the underlying crime.

22 Kennedy testified that he thought he was ALREADY under arrest when those statements were
23 made to him by the officers. The court concluded, therefore, that his statement was NOT induced
24 by fear of arrest. In our case, Mr. Jones did NOT make a taped statement, until he was told that
25 he could decide if he was going to be a witness or a defendant, and after he had been informed
26 that he was looking at 25 to life.

27 Of course, Mr. Jones, although admitting that he drove Mr. Kilgore to the location of the
28 shooting, denied that he knew Mr. Kilgore had a weapon. He stated that he drove Mr. Kilgore to

1 where the shooting occurred thinking there was going to be a fist fight and that he, Jones would
2 be there to equal things out or watch Mr. Kilgore's back It was easy to exculpate himself and
3 inculcate Mr. Kilgore.

4 In People V. Johnson (1989) 47 Cal. 3d 1194, the court found that the statements of co-
5 responsible Hodges, were NOT voluntary due to a number of reasons. He was arrested without
6 probable cause, he was promised rewards and leniency, he was threatened that if he didn't talk, he
7 would be prosecuted, when there was no evidence to support a prosecution. He was pressured
8 and misled regarding out of county crimes he had. Defendant Johnson had no standing regarding
9 Mr. Hodges' Miranda rights, but showing that they were violated was certainly a factor in
10 examining the voluntariness of Mr. Hodges' statement.

11 In our case, based on an anonymous tip that Raymond Jones was the driver of the Cadillac
12 involved in the shooting on 7/16/00, the police go to Mr. Jones' work place and take him into
13 custody on a charge of murder (see Exhibit A.) In fact, even after review of Mr. Jones' coerced
14 statement, there is insufficient evidence to prosecute him. There was NO probable cause to arrest
15 Mr. Jones. He was threatened that if he chose NOT to speak to the police that he moved himself
16 from the category of witness to defendant.

17 Since Mr. Raymond Jones' statement was involuntary, the next question, according to Johnson
18 (supra,) is whether there is attenuation between his coerced statement and his trial testimony. The
19 People have to prove the voluntariness of Mr. Jones' statement beyond a reasonable doubt. To
20 prove that the coercion of the statements is attenuated from the anticipated trial testimony, the
21 standard is only clear and convincing evidence, Johnson (supra at 1226.)

22 In this case, the government chose to charge Mr. Jones on November 28, 2000, with section
23 32, and issued a declaration in support of arrest at that time (Exhibit A.) Counsel would submit
24 that there was never any additional evidence uncovered against Mr. Jones, other than that original
25 anonymous tip, and his own admissions.

26 It is not mere coincidence that Mr. Kilgore surrendered to the Oakland police on 11/1/00. On
27 11/14/00, Sargent Green found that he could not locate Mr. Jones at his old employment. Mr.
28 Jones was charged to get leverage on him and to ensure that he would be available to testify at

1 trial. Mr. Jones was first in court on this new charge on 3/5/01, having spent 4 days in custody.
2 This indicates that Mr. Jones was still not voluntarily working with the authorities. His court date
3 is continued from 3/5/01 to 6/7/01. Mr. Kilgore's preliminary hearing was held on 6/5/01. It
4 appears that Mr. Jones had to testify or appear on 6/7/01 to face harsher charges?

5 In People V. Superior Court (Sosa) (1982,) the court found that the illegal activities resulting
6 in an involuntary statement were NOT attenuated from the anticipated trial testimony. In Sosa
7 (supra at 893,) they talk about U.S. V. Ceccolini (1978) 435 U.S. 268, 55 L. Ed.2d 268, 98
8 S.Ct.1054,

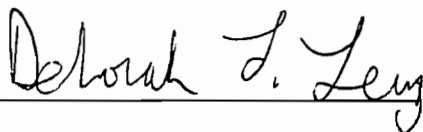
9 " In performing this analysis, the court emphasized as one consideration the degree of free
10 will exercised by the witness because "[t]he greater the willingness of the witness to freely testify,
11 the greater the likelihood that he or she will be discovered by legal means and, concomitantly, the
12 smaller the incentive to conduct an illegal search to discover the witness." (P. 276 [55 L.Ed.2d at
13 p. 277].) The court also required a close, direct link between the illegality and the evidence before
14 suppressing testimony because suppression disables the witness from testifying about material
15 facts and because the cost of such suppression is high in terms of distorting the outcome of the
16 trial."

17 In our case, the illegal arrest and detention of Mr. Jones are the only reason he made a
18 statement at all. Mr. Jones does NOT want to testify.

19
20 WHEREFORE, the defense urges this court to find that the statement of Mr. Jones is
21 involuntary and there is NO attenuation between his original statement and his anticipated trial
22 testimony. His statement must be suppressed, and he should be prohibited from testifying.

23 DATED: 2/27/03

24
25 Respectfully Submitted,

26 
27

28 Deborah L. Levy

As required by the provisions of Penal Code §851.6, I hereby certify that the taking into custody of

JONES, RAYMOND 0373334
(Subject's Name) (CEN)

for 187PC on 17JUL00 by
(Charge) (Date)

☒ the Oakland Police Department

☒ was a detention only, not an arrest.

☒ JONES, RAYMOND was released on 18JUL00
(Subject's Name) (Date)

by the Oakland Police Department.

Sections 849, 849.5 and 851.6 are included as part of this certificate and appear on the reverse.

Signed [Signature] Sgt. Green
Title/Serial No.

Prisoner's Name <u>JONES, RAYMOND</u>	Sex <u>M</u>	Race <u>B</u>	Age <u>36</u>	DOB <u>6 DEC 63</u>	Arrest No. <u>17934</u>
Reason for Release: <u>NO ARREST - Detention Only - 849(B)(1) PC</u>	Charge(s): <u>187PC</u>				PFN <u>ASF189</u>
Officer Ordering Release <u>Sgt. Green</u>	Serial No. <u>8012C</u>	Order Date <u>18JUL00</u>	Time <u>1500</u>	RD No. <u>00-64017</u>	
Reason for Release: <input type="checkbox"/> Insufficient Evidence <input checked="" type="checkbox"/> D.A. Refused to Prosecute <input type="checkbox"/> Complainant Refused to Prosecute <input type="checkbox"/> Released Pending Further Investigation <input type="checkbox"/> Released from Jail; no charge <input type="checkbox"/> Other:					
Order Received in Jail by:	Date	Time	Prisoner Released by:	Date	Time
			<input type="checkbox"/> 402 Only		

000312

JONES, RAYMOND
 Name of Interviewed Person:
☐ Victim ☐ Witness ☐ Suspect ☐ Other

Green / delivery
 Investigator(s):

Interview Room:
☒ 201 ☐ 211
☐ 202 ☐ 235
☐ 203 ☐ 236
☐ 206 ☐ 238
☐ 210 ☐ _____

17 JUL 00
 Date of Interview

Case Information:
 Victim: Anderson, William
 Date of Crime: 1999
 Primary Offense: 187 PC

Time	Action/Activity	Name and S/N
1845	Placed into Interview Room	S. Johnson 81264
1915	W/O in	PG 8012C
2159	OUT - Restroom / Smoke / Water (W3) Suck	PG 8012C
2211	Back in 201	PG 8012C
2307	OUT / CLAMOR	PG 8012C
0053	PA in	PG 8012C
0122	OUT	PG 8012C
0124	Water	PG 8012C
0130	TO JAIL	E/D 7193C
	Removed from Interview Room: <input type="checkbox"/> OCJ <input type="checkbox"/> Released Other: _____	

000313

STATEMENT

Oakland Police Department

536-200-1 (6/93)

Page 1 of 1

2. Report No.

1. Complainant <u>Anderson William</u>		Offense/Crime <u>187A</u>		2. Report No. <u>00-64017</u>	
3. Name of Person Giving Statement <u>Jones Raymond</u>		Sex/Race/DOB <u>M B 12/1/63</u>	<input type="checkbox"/> Complainant <input checked="" type="checkbox"/> Suspect <input type="checkbox"/> Reporting Person <input type="checkbox"/> Witness		
4. Residence Address <u>509 Sycamore #6</u>		City/Zip		Phone () N/A	
5. Employment (Name, Address, Phone, Occupation, Work Hours, Days Off) or Supplemental Information if Unemployed or Transient <u>201 E. 18th St Mount Baker</u>					
6. Statement Taken By <u>Sgt. Green</u>		Serial No. <u>8012C</u>	Date <u>7-17-00</u>	Time Started - Complete <u>1920 - 0130</u>	
7. Location Where Statement Taken <u>CID 201</u>		Names, Addresses of Persons Present During Statement <u>Sgt. Green</u>			

FOR VEHICLE COLLISIONS ONLY

8. License No.	State	Veh. Yr.	Make	Model	Type	Color(s)	Driver License No.	State
9. Registered Owner		Address		City/Zip		Residence/Business Phone ()		

ADMONITION: You have the right to remain silent. Anything you say can be used against you in a court of law. You have the right to talk to a lawyer and have him present with you while you are being questioned. If you cannot afford a lawyer, one will be appointed to represent you before any questioning if you wish one.

WAIVER: Do you understand each of these rights I have explained to you? YEA

Having these rights in mind, do you wish to talk to us now? YEA

Statement:

11/1/00

DOCKET
1. NAME _____ DEPT. **112** CRT. DATE/TIME **3/15/01 1:**
EVENT
NAME **JONES, RAYMOND EDWARD** RPT. NO. **00-64017** DOCK NO. **46195**

3. PROC. **SET** CEN. **0406347** PFN. **ASF189** A DAY **12/18/00** SJ DATE **9/21**
COUNTS **AAG-OPD ACITY OA**
4. CHARGES **1)F32 PC**

STAT OR BAIL TOTAL DAYS IN CUSTODY: **4**
5. BAIL _____ STAT. _____ BOND DT. _____ BOND CO. _____ DOB **12/06/**
BAIL _____ STAT. _____ BOND DT. _____ BOND CO. _____ BAC _____
6. FINE/REST. _____ DATE PAID _____ REC. NO. _____ TIME WAIVED **TW 10460**

PROCEEDING
7. JUDGE **MARSHALL WHITLEY** DEP. D.A. **Pais DCCO Coleman**
8. DEP. CLERK **TRINA CROWELL** DEF. ATTY. **DAVIS, JASON**
9. REPORTER _____ OTHERS _____

0. DEF. PRESENT ☒ YES ☐ NO ☐ EXCUSED ATTY. PRESENT ☒ YES ☐ NO ☐ PRO PER
(circle one) (circle one)
1. WAIVER OF RIGHTS SIGNED AND FILED Ref. to P.D. _____ PLEA OF: () NOT GUILTY () GUILTY
() YES () NO () ORAL FIN INELIGIBLE FOR P.D. _____ () NO CONTEST/FOUND GUILTY
() SLIO/SRRO _____ CHARGE _____ () PURSUANT 23103.5 V.C. () ADMITS PRIORS
() PRIOR(S) STRICKEN/SPO () ADMITS CLAUSES

MOTIONS MADE
2. () ORAL () WRITTEN
3. BY **PEOPLE DEFENSE STIPULATION PRO-PER**
4. () BAIL REDUCTION () DISMISS () OR
() GRANTED () DENIED () DROPPED
() SUBMITTED () CONT'D () WITHDRAWN
() DULY ARRAIGNED/ADVISED ON CONSTITUTIONAL RIGHTS () WAIVES ARRAIGNMENT () HANDED COPY OF COMPLAINT () DISCOVERY () AMENDED () PE
() REF TO PROB: REST ONLY/DIV /PRE PLEA () COND SENT () FORM PROB () REV () HG WAIVED () VIOLATION ADMIT / FOUND
() REINSTATED SAME T & C () MODIFIED () TERMINATED

BENCH WARRANT
ORDERED FOR _____
BAIL \$ _____
ISSUED BY _____
DATED _____
BW RETURN OR W/D _____
HOLD UNTIL _____
BAIL STATUS
() BF () CONT. TO SJ DATE
BF OF _____ SET ASIDE
BAIL EXONERATED _____
BAIL REINSTATED _____
SJ ENTERED _____
SURRENDERED _____ YES _____ NO _____

NOT FOR SERVICE
() ADVISED 987.8 PC () O.R. ADVISEMENT () DEFENDANT EXCUSED () MUST APPEAR AT NEXT COURT DATE
() REFER TO FHO () ADVISED 1016.5 (a) PC () SEARCH & SEIZURE () 4 WAY () 3 WAY () SEE ORDER

CONTINUATION RECORD
DATE **6-7-01**
TIME **0900**
EPT. **112**
ME **Plea/Set**
AA DB TQ QU CR
DA DU OA VW QH
EP FF QC WG UG
DB DT TR AQ UJ
DY SB OK UH KA
DISPOSITION
ME **JONES, RAYMOND EDWARD** CT. DATE **3/15/01** DOCK NO. **461958**

000315

WARRANT OF ARREST

WILEY W. MANUEL COURTHOUSE, OAKLAND
461 WASHINGTON ST., OAKLAND, CA 94607
THE PEOPLE OF THE STATE OF CALIFORNIA

VS.

DOCKET NUMBER: 461958

CEN: 040634

PFN: 00A827

DEFENDANT: RAYMOND EDWARD JONES

EVENT NAME: RAYMOND EDWARD JONES

PFN NAME:

DEPT NO: 112

DOB: 12/06/63 RACE: B SEX: M HT: 600 WT: 155

REPORT NO: 00-640

HAIR: BK EYE: BR BALD: GLASS: MAR: POB:

WCD: 10/03/

SALIENT CHAR:

ADDRESS: 509 SYCAMORE ST 6

C-S-Z: OAKLAND, CA 94612

TELEPHONE NO:

AREA CODE:

EMPLOYER:

DLN:

SSN:

CII:

FBI:

FELONY

WARRANT OF ARREST

THE PEOPLE OF THE STATE OF CALIFORNIA, TO ANY PEACE OFFICER IN THIS STATE:

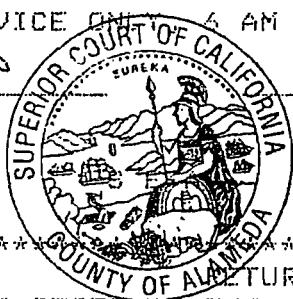
A COMPLAINT UPON OATH HAVING BEEN MADE BEFORE ME THAT THE OFFENSE(S) OF
PC 32 F
HAVING BEEN COMMITTED, AND ACCUSING RAYMOND EDWARD JONES
THEREOF.

YOU ARE COMMANDED FORTHWITH TO ARREST THE ABOVE NAMED DEFENDANT, AND TO BRING
SAID DEFENDANT FORTHWITH BEFORE THE ABOVE ENTITLED MUNICIPAL COURT.

DEFENDANT MAY BE ADMITTED TO BAIL IN THE AMOUNT OF: \$15,000.

☒ MAY BE SERVED DAY OR NIGHT☐ CASH BAIL ONLY☐ DAY SERVICE ONLY 6 AM TO 10 PM☐ EXTRADITE/NOT LIMITED TO CA

DATED: 12/5/08



JUDGE OR COMMISSIONER

***** RETURN OF PEACE OFFICER *****

I CERTIFY THAT I RECEIVED THE WITHIN WARRANT ON _____
THAT I SERVED THE SAME BY ARRESTING THE WITHIN NAMED DEFENDANT ON _____
, _____, AND THAT I HAVE BROUGHT SAID DEFENDANT INTO CO.
ON _____.

NAME AND TITLE OF PEACE OFFICER

OFFICER OR DEPUTY

UPON ADMISSION TO BAIL, SET APPEARANCE FOR NEAREST DAY THAT WILL ALLOW RECE
OF BOTH WARRANT AND BAIL BY THIS COURT. TIME: 9:00 AM ON ANY DAY, MONDAY
THROUGH FRIDAY, EXCEPT HOLIDAYS.

000316

**DECLARATION IN SUPPORT OF ARREST
AND/OR ISSUANCE OF WARRANT OF ARREST**

The undersigned hereby declares, upon information and belief:

That he is a Police Officer of the
City of Oakland, California.

That a complaint charging Raymond Jones, Defendant

with the crime(s) of

32 PC

has been issued and is filed herewith the Clerk of the Court.

That said Defendant committed said offense(s) in the manner and by the means as set forth and described
in the following documents:

Oakland Police Report # 00-64017

copies of which documents are attached hereto and incorporated by reference as though fully set forth.

That said documents were prepared in the ordinary course of business and pursuant to the sworn duty
of the officer(s) subscribing same, and that declarant believes the contents thereof to be true.

That the contents of said documents provide probable cause to believe that the said Defendant committed
said offense(s) and therefore support the arrest and/or the issuance of a warrant of arrest for said Defendant.

Dated: 11-29-00 at Oakland Alameda County, California.

I declare under penalty of perjury that the foregoing is true and correct.

Kim W. Hall

SEAL
SUPERIOR COURT, WILEY W. MANUEL COURTHOUSE
ALAMEDA COUNTY OF ALAMEDA, STATE OF CALIFORNIA

000317

PEOPLE OF THE STATE OF CALIFORNIA

CLERK OF THE SUPERIOR COURT
BY [Signature] DEPUTY
VS.

No.

461958
COMPLAINT

PFN: ASF189 DOA827

CEN: 0406347

JONES, RAYMOND

Defendant(s)

The Undersigned, being sworn, says, on information and belief, that said defendant(s) did, in the County of Alameda, State of California, on or about **JULY 16, 2000**, commit a **FELONY** to wit: a violation of Section 32 of the Penal Code of California, in that said defendant(s) did willfully and unlawfully after a felony, to wit: **MURDER**, had been committed, harbor and conceal and aid one **IVAN KILGORE**, a principal in said felony, with intent that said **IVAN KILGORE** might avoid and escape from arrest and trial and conviction and punishment, said defendant(s) having knowledge that said **IVAN KILGORE** was a principal in said felony.

Pursuant to Penal Code Section 1054.5(b), the People are here by informally requesting that the defendant's counsel provide discovery to the People as required by Penal Code Section 1054.3

Complainant therefore prays that a warrant issue and that said defendant(s) be dealt with according to law.

Subscribed and sworn to before me,

this 28th day of November, 2000.

[Signature]
Deputy District Attorney
Alameda County, California

[Signature]
OPD RPT# 00-64017
124636JPM/kv

COMPLAINANT ANDERSON, WILLIAM		DEFENDANT KILGORE, IVAN		RD NO. 0064017
DATE/TIME				
12Sep00 1200		<p>I reviewed the case packet and noticed a note from Sgt. Medeiros. He took a phone call from a refused caller who stated Steven Hill who lives at 2846 Moyers Rd. in Richmond, was responsible for the shooting. T/C to phone number no answer. I ran Corpus/RMS/CDL on Hill. I pulled a CORPUS photo and prepared a photo line- up as follows:</p> <p>1) Cook, ARE738 2) Smith, AJJ756 3) Hill, AHY088 4) Armstrong, ACF893 5) Starns, AHY871 6) Edwards, ADE758.</p> <p>I went to 509 Sycamore # 6, No answer.</p>		
31Oct00 1100		I received a call from a woman who said her name was "Corey." She stated that she is an attorney and that Kilgore wanted her to call and check on the case. I told her that Kilgore had a warrant for his arrest.		
1Nov00 1105		I received a call from Ivan Kilgore he wanted to turn himself in. He agreed to meet me at a 7-Elev at the corner of Hillsdale and Palm in Sacramento.		
1410		I met with Ofc. Riggs, FBI Agent Linhan, and Sgt. Loman. We drove to the 7-Eleven store and m with Kilgore. I took him into custody and placed him in the rear of my vehicle. Kilgore stated tha he did not want to make any comments regarding the case with out having an attorney present. S Loman and I drove Kilgore back to OPD and placed him in room 201 while we waited for the hard copy of the warrant.		
1640		I delivered Kilgore to OCJ and booked him on the warrant.		
8Nov00 1245		T/C to Richmond PD records. Alicia ran RMS for 2846 Moyers and Steven Hill. She faxed me tl information. There was no match for the name of "Sick."		
1330		I listened to the 911 tape. There was one phone number of 332-9914 from a person calling in to report the crime to the CHP. I called the cell phone and left a message to contact me.		
14Nov00 1245 1400		<p>I went to 509 Sycamore St. #6. Jones no longer lives at that address. No on-site manager.</p> <p>T/C to Merritt Bakery. I spoke to Diane in personnel. She told me that Jones had been terminated but had no information on the date.</p> <p>Case closed. O1</p>		
INVESTIGATOR	SERIAL NO.	2ND INVESTIGATOR	SERIAL NO.	SUPERVISOR
Sgt. P. Green	8012C			Lt. Berlin

C00318

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
CLERKS DOCKET AND MINUTES

KILGORE, IVAN

DEPT. 006 CRT. DATE/TIME 3/03/03 09:30

EVENT NAME KILGORE, IVAN DAWNELL

RPT. NO. 00-64017 DOCK NO. 141033

I. PROC. JT COUNTS CEN. 0373689 PFN. BBV550 A DAY 11/01/00 SJ DATE 9/09/03
PIC 00500 AAG-OPD ACITY DA

CHARGES 1)F187 SCEUSE PC 1 PR

STAT SET BAIL \$0.00 TOTAL DAYS IN CUSTODY: 849

BAIL STAT. BOND DT. BOND CO. DOB 05/05/75
BAIL STAT. BOND DT. BOND CO. BAC
FINE/REST. DATE PAID REC. NO. NORTH 1 TIME WAIVED NTW 3/14/03

PROCEEDING

DCCO:

JUDGE KENNETH KINGSBURY
DEP. CLERK WANDA BOYNS
REPORTER GERALD DOHRMANNDEP. D.A. DARRYL STALLWORTH
DEF. ATTY. DEBORAH LEVY
OTHERS☐ Not Present

Defendant: ☒ Present ☐ Not Present ☐ Excused ☒ In Custody ☐ Pro Per

☐ Interpreter _____ is present. Language spoken: _____

☐ Defendant duly arraigned/advised as to constitutional rights ☐ Defendant waives arraignment ☐ Waiver of Rights filed

☐ Defendant served: ☐ Complaint ☐ Discovery ☐ Petition ☐ Motion ☐ Protective Order (PC 136.2)

☐ Referred to Public Defender ☐ Public Defender files conflict ☐ Financially ineligible ☐ Private counsel appointed

☐ Plea Withdrawn ☐ Change of Plea ☐ Plea to count(s) _____ ☐ Not Guilty ☐ Guilty ☐ No Contest/Found Guilty

☐ Stipulates to: lesser included / reasonably related offense of count(s) _____ to charge(s) _____

Time waived for: ☐ Preliminary Examination _____ days ☐ Trial ☐ Sentence ☐ Time not waived ☐ Time waiver withdrawn

Clauses: ☐ Stricken ☐ Admitted ☐ Sentencing Purposes Only

Priors: ☐ Stricken ☐ Admitted ☐ Denied

Probation: ☐ Conditional Sentence: ☐ Granted for _____ years/months ☐ See attached conditions
☐ Revoked ☐ Restored ☐ Modified ☐ Extended to _____ ☐ Continue on same terms and conditions ☐ Terminated

☐ Defendant admits probation violation ☐ Previous order revoking probation vacated, set aside, defendant restored to probation

☐ Submit to search and seizure of person, residence, vehicle or any property under defendant's control _____

☐ No contact with / not to annoy _____, directly or indirectly: stay at least _____ away

☐ Additional order(s): _____

☐ Petition/Motion _____ ☐ Granted ☐ Denied ☐ Withdrawn

☐ Referred to: ☐ Probation Dept. ☐ Financial Hearing Officer ☐ _____

Restitution: ☐ Referred to _____ for Determination ☐ Ordered ☐ Reserved ☐ Modified

☐ Bail Forfeited ☐ Bail Forfeiture Set Aside ☐ Bail Reinstated ☐ Bail Exonerated ☐ Summary Judgment Entered

☐ Bench Warrant: ☐ Issued ☐ Withheld ☐ Withdrawn ☐ Bail Set at \$ _____ ☐ No Cite Release ☐ Night Service

2X CERT-CRT:WMM

FUTURE COURT DATES: 3/04/03 JT

Cont. Date: 3-6-03 Time: 0930 Dept. 006 Proc.: JT Date: _____ Time: _____ Dept. _____ Proc.: _____

Codes: _____

DOCKET NAME KILGORE, IVAN DAWNELL

CT. DATE 3/03/03 DOCK NO. 141033

1 THOMAS J. ORLOFF
2 District Attorney
3 County of Alameda
4 900 Courthouse
5 1225 Fallon Street
6 Oakland, CA 94612-4292
7 (510) 272-6222

8 Darryl A. Stallworth
9 Deputy District Attorney
10 [State Bar # 163719]

Trial Date: February 24, 2003

FILED
ALAMEDA COUNTY

MAR 4 - 2003

CLERK OF THE SUPERIOR COURT
By Wanda J. Payne DEPUTY

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA**

THE PEOPLE OF THE STATE OF CALIFORNIA,)

v.

IVAN KILGORE

Defendant,

) No. 141033

) Department No. 6

) RESPONSE TO DEFENSE
) MOTION TO EXCLUDE
) WITNESS'S TRIAL
) TESTIMONY

MEMORANDUM OF POINTS AND AUTHORITIES

**I. RAYMOND JONES' STATEMENT TO SGT. GREEN WAS VOLUNTARY AND NOT
THE RESULT OF THREATS, PROMISES OR COERCION**

To determine whether a statement was involuntary the courts balance the nature and extent of the psychological pressure against the suspect's mental and physical condition. *People v. Kelly* (1990) 51 Cal.3d 931.

On July 17, 2000 around 7:00 p.m Sgt. Green interviewed Raymond Jones as a suspect in the murder of William Anderson. Jones' transcribed statement and subsequent preliminary hearing transcript reveals the following: Raymond Jones was 37 years old, sober, coherent, and familiar with talking to the police. Sgt. Green at no time threaten Mr. Jones either physical or mentally. Sgt. Green read Mr. Jones

1 his Miranda rights, which he voluntarily waved. Sgt. Green then merely advised Mr. Jones that they
2 knew Ivan Kilgore was the shooter and that Mr. Jones had a choice of either being a witness or a
3 defendant. Although Mr. Jones initially lied to Sgt. Green regarding his involvement, he asked for a
4 cigarette and soon thereafter agreed to speak truthfully about the events surrounding the murder of
5 William Anderson.

6
7 Mr. Jones stated that although he was the driver of the car used by defendant to shoot and
8 murder William Anderson, defendant never made him aware of his intentions. With defendant still yet to
9 be arrested and with little evidence to suggest Mr. Jones knew of defendant's intentions, no charges were
10 filed and Mr. Jones was released. In December of 2000 defendant turned himself in and Mr. Jones was
11 then charged as an accessory.

12
13 *People v. Jones (1980) 105 Cal.App. 3d 572* cited by defendant, found that the witness'
14 statement to the police was not coercive because there was not a fear of an arrest. Similarly, the witness
15 in our case, Raymond Jones understood that he was already under arrest and the questioning officer in both
16 cases never told either witness that they would be set free if they gave a statement.

17
18 *People v. Johnson (1989) 47 Cal.3d 1194* also cited by defendant, is distinguished on its
19 facts. The witness in *Johnson*, unlike Raymond Jones, was arrested without probable cause, promised
20 rewards and leniency, and threaten that if he did not talk, he would be prosecuted. The two cases are
21 entirely different. Raymond Jones was never threaten or promised anything. Statements of possible legal
22 consequences, without threats, are permissible. *People v. Flores (1983) 144 Cal. App. 3d 459*.

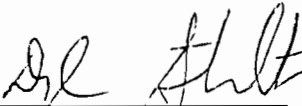
23
24 In *People v. Badgett (1995) 10 Cal.4th 330* the state illegally arrested the witness, gave her
25 improper promises of leniency, interfered with her attorney's representation of her and entered into a
26 coercive immunity agreement with her. In *People v. Douglas (1990) 50 Cal.3d 468* the Mexican Police
27 broke the witness' ribs and threatened to shoot him to get his first statement; then the Anaheim police
28

000322

1 took a second statement based on the first without benefit of Miranda warnings; these statements formed
2 the basis of the immunity agreement under which the witness testified.

3
4 In both of these cases the California Supreme court **refused** to exclude the live testimony of the
5 witness as a sanction for the official misconduct unless the defense could show that the trial testimony itself
6 was involuntary. The California Supreme court further adds that they have a **strong** interest under any
7 system of justice of making available to the trier of fact all concededly relevant and trustworthy evidence
8 which either party seeks to introduce. *Michigan v. Tucker (1974) 417 U.S. 433.*

9
10 For the above-mentioned reasons the people respectfully request that the court deny defendant's
11 motion to exclude Raymond Jones' trial testimony.

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20 Deputy District Attorney
Darryl Stallworth

March 3, 2003

THOMAS J. ORLOFF
 District Attorney
 County of Alameda
 900 Courthouse
 1225 Fallon Street
 Oakland, CA 94612-4292
 (510) 272-6222

Darryl A. Stallworth
 Deputy District Attorney
 [State Bar # 163719]

Trial Date: February 24, 2003

FILED
 ALAMEDA COUNTY

MAR 4 - 2003

CLERK OF THE SUPERIOR COURT
 By Wanda J. Brown
 DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF ALAMEDA**

THE PEOPLE OF THE STATE OF CALIFORNIA,)

v.

IVAN KILGORE

Defendant,

) No. 141033

) Department No. 6

) RESPONSE TO DEFENSE

) MOTION TO DISMISS

) OKLAHOMA PRIOR AS

) A STRIKE AND PROHIBIT
 USE TO IMPEACH

MEMORANDUM OF POINTS AND AUTHORITIES

I. ALTHOUGH DEFENDANTS' OKLAHOMA PRIOR READS LIKE AN INVOLUNTARY MANSLAUGHTER, A LOOK INTO THE ENTIRE RECORD SHOWS THAT HE USED A FIREARM, THUS MAKING IT A SERIOUS FELONY.

In determining the truth of a prior conviction allegation, the trier of fact may look at the entire record of the conviction. *People v. Guerrero (1998) 44 C3d 343*. The entire record includes the transcript of the preliminary hearing, the trial transcript, and any statements made by the defendant in the probation report. *People v. Castellanos (1990) 219 CA 1163*. A look into both Defendant's preliminary hearing and trial transcript from his Oklahoma prior shows unequivocally that he personally used a firearm.

C00324

1
2 Penal Code Section 1192.7(c)(8) defines a serious felony as follows: Any felony in which the
3 defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony
4 in which **defendant personally uses a firearm**. In *People v. Williams (1996) 50 Cal.App.4th 1405*
5 defendant pled no contest to Health and Safety Code section 11377(a), a felony. He waived a jury trial
6 on his two prior felony convictions, one of which was an assault on a police officer formerly a 245(b) now
7 a 245(c). The trial court, with nothing more than a copy of defendant's no contest plea form, found the
8 conviction to be a serious felony within the meaning of Penal Code Section 667 (d). The Court of appeal
9 held that the trial court erred in finding the conviction was a serious felony because the prosecution failed
10 to prove beyond a reasonable doubt the assault involved a deadly weapon.

11
12 Unlike our present case, the prosecution failed to produce anything beyond the plea form to show
13 that defendant used a deadly weapon in the commission of the assault. Seminole County Deputy District
14 Attorney Tim Olsen prosecuted defendant on his Oklahoma prior. Mr. Olsen states that defendant took
15 the stand and in sum related the following: Three days before the killing, victim stole some guns from him.
16 When he confronted the victim, the victim appeared to be reaching for a weapon. He then pulled out his
17 gun and shot the victim in the head. At both the preliminary hearing and jury trial, a number of witnesses
18 identified defendant as the shooter.

19
20 **II. DEFENDANT PERSONALLY USED A DEADLY WEAPON DURING THE**
21 **COMMISSION OF HIS OKLAHOMA PRIOR, THUS MAKING IT A CRIME OF**
22 **MORAL TURPITUDE AND THEREFORE ALLOWING HIM TO BE IMPEACHED BY IT**
23 **WERE HE TO TESTIFY**

24 A crime of moral turpitude is crime which indicates a readiness to do evil. *People v. Castro*
25 *(1985) 38 C3d 301*. What felonies will be considered crimes of moral turpitude can be determine only on
26 a case by case basis. Defendant in his own words, admitted having personally used a firearm, which
27 resulted in the death of a human being. This is the classic example of "a readiness to do evil."

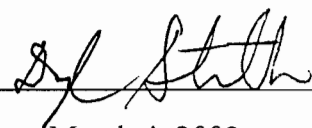
000325

1
2 Under 352 of the Evidence Code, defendant's prior use of a firearm resulting in great bodily
3 injury is far more probative than prejudicial. In our case defendant proposes to introduce a self-defense
4 theory similar to the one he used in his Oklahoma case. Evidence of other crimes is admissible when it
5 tends to logically and by reasonable inference prove any fact material for the prosecution, or to overcome
6 any fact sought to be proved by the defense. Evidence of defendant's prior use of a self-defense theory
7 is not only extremely probative, but imperative. It is well settled that when a defendant uses the same
8 excuse to explain his conduct on more than one occasion, his prior statements are admissible to prove his
9 present explanation is fabricated. *People v. Ricketts (1970) 7 Cal. App.3d 441.*

10
11 To allow defendant to take the stand and yet again fabricate a self-defense theory that he has
12 already used before, without allowing the prosecution to question him about it, would be a miscarriage of
13 justice.

14 For the above-mentioned reasons the people respectfully urge the court to deny defendant's
15 motion to dismiss the Oklahoma prior as a strike and prohibit its use to impeach the defendant.

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23 Respectfully submitted by:
24 Deputy District Attorney
25 Darryl Stallworth


March 4, 2003

THOMAS J. ORLOFF
District Attorney
County of Alameda
900 Courthouse
1225 Fallon Street
Oakland, CA 94612-4292
(510) 272-6222

Darryl A. Stallworth
Deputy District Attorney
[State Bar # 163719]

Trial Date: February 24, 2003

**ENDORSED
FILED**
ALAMEDA COUNTY

MAR 4 - 2003

CLERK OF THE SUPERIOR COURT
By Wanda J. Boyns, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA**

THE PEOPLE OF THE STATE OF CALIFORNIA,)

v.

IVAN KILGORE

Defendant,

No. 141033

Department No. 6

RESPONSE TO DEFENSE
MOTION TO DISMISS
OKLAHOMA PRIOR AS
A STRIKE AND PROHIBIT
USE TO IMPEACH

MEMORANDUM OF POINTS AND AUTHORITIES

I. ALTHOUGH DEFENDANTS' OKLAHOMA PRIOR READS LIKE AN INVOLUNTARY MANSLAUGHTER, A LOOK INTO THE ENTIRE RECORD SHOWS THAT HE USED A FIREARM, THUS MAKING IT A SERIOUS FELONY.

In determining the truth of a prior conviction allegation, the trier of fact may look at the entire record of the conviction. *People v. Guerrero* (1998) 44 C3d 343. The entire record includes the transcript of the preliminary hearing, the trial transcript, and any statements made by the defendant in the probation report. *People v. Castellanos* (1990) 219 CA 1163. A look into both Defendant's preliminary hearing and trial transcript from his Oklahoma prior shows unequivocally that he personally used a firearm.

Penal Code Section 1192.7(c)(8) defines a serious felony as follows: Any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which defendant personally uses a firearm. In *People v. Williams (1996) 50 Cal.App.4th 1405* defendant pled no contest to Health and Safety Code section 11377(a), a felony. He waived a jury trial on his two prior felony convictions, one of which was an assault on a police officer formerly a 245(b) now a 245(c). The trial court, with nothing more than a copy of defendant's no contest plea form, found the conviction to be a serious felony within the meaning of Penal Code Section 667 (d). The Court of appeal held that the trial court erred in finding the conviction was a serious felony because the prosecution failed to prove beyond a reasonable doubt the assault involved a deadly weapon.

Unlike our present case, the prosecution failed to produce anything beyond the plea form to show that defendant used a deadly weapon in the commission of the assault. Seminole County Deputy District Attorney Tim Olsen prosecuted defendant on his Oklahoma prior. Mr. Olsen states that defendant took the stand and in sum related the following: Three days before the killing, victim stole some guns from him. When he confronted the victim, the victim appeared to be reaching for a weapon. He then pulled out his gun and shot the victim in the head. At both the preliminary hearing and jury trial, a number of witnesses identified defendant as the shooter.

II. DEFENDANT PERSONALLY USED A DEADLY WEAPON DURING THE COMMISSION OF HIS OKLAHOMA PRIOR, THUS MAKING IT A CRIME OF MORAL TURPITUDE AND THEREFORE ALLOWING HIM TO BE IMPEACHED BY IT WERE HE TO TESTIFY

A crime of moral turpitude is crime which indicates a readiness to do evil. *People v. Castro (1985) 38 C3d 301*. What felonies will be considered crimes of moral turpitude can be determine only on a case by case basis. Defendant in his own words, admitted having personally used a firearm, which resulted in the death of a human being. This is the classic example of "a readiness to do evil."

Office of the
District
Attorney
Alameda County
California

That is the case
read cases
- gave
- 2 -
- evening
- oral -
- turpitude
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- imperfect
- self-defense, it
- clearly show
- 10 readiness
- to do evil!
- no legal
- help

I didn't know it was the day of incident
vic. who stole
until

(The issue of imperfect self-defense)

(someone) didn't know it

was vic until day of incident

1
2 Under 352 of the Evidence Code, defendant's prior use of a firearm resulting in great bodily
3 injury is far more probative than prejudicial. In our case defendant proposes to introduce a self-defense
4 theory similar to the one he used in his Oklahoma case. Evidence of other crimes is admissible when it
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8 excuse to explain his conduct on more than one occasion, his prior statements are admissible to prove his
9 present explanation is fabricated. *People v. Ricketts* (1970) 7 Cal. App.3d 441.

10
11 To allow defendant to take the stand and yet again fabricate a self-defense theory that he has
12 already used before, without allowing the prosecution to question him about it, would be a miscarriage of
13 justice.

14 For the above-mentioned reasons the people respectfully urge the court to deny defendant's
15 motion to dismiss the Oklahoma prior as a strike and prohibit it's use to impeach the defendant.

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23 Respectfully submitted by: _____
24 Deputy District Attorney
Darryl Stallworth March 4, 2003

(7/00)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

C00326
Dept. No. 006

Date: March 3, 2003

Hon. **KENNETH R. KINGSBURY**, Judge

Wanda Boyns, Dep. Clk.
Gerald Dohrmann, Reporter

THE PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff

vs.

IVAN KILGORE

Defendant

Counsel appearing
for Plaintiff

Darryl Stallworth, Deputy
District Attorney

Counsel appearing
for Defendant

Deborah Levy, Esq

NATURE OF PROCEEDINGS:

JURY TRIAL

Case No. **141033**
PFN: **BBV550**
CEN: **0373689**

Above entitled action comes on calendar this date having been continued from February 27, 2003 for jury trial

2:00 p.m. Respective counsel, defendant and prospective jurors with hardship requests are present. Pursuant to stipulation of counsel the names of the prospective jurors called on the record are excused from further service. Two prospective jurors appearing for hardship are asked to return on Tuesday, March 4, 2003 at 9:00 a.m. for jury selection.

3:00 p.m. Court is in recess until March 4, 2003 at 9:30 a.m. for jury selection and trial.

RENE DAVIDSON COURTHOUSE

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
CLERKS DOCKET AND MINUTES

000327

KILGORE, IVAN

DEPT. 006 CRT. DATE/TIME 3/04/03 09:30

EVENT NAME KILGORE, IVAN DAWNELL

RPT. NO. 00-64017 DOCK NO. 141033

PROC. JT CEN. 0373689 PFN. BBV550 A DAY 11/01/00 SJ DATE 9/10/03
COUNTS PIC 00S00 AAG-OPD ACITY OA

CHARGES 1)F187 SC&USE PC 1 PR

STAT SET BAIL \$0.00 TOTAL DAYS IN CUSTODY: 852

BAIL STAT. BOND DT. BOND CO. DOB 05/05/75
BAIL STAT. BOND DT. BOND CO. BAC
FINE/REST. DATE PAID REC. NO. NORTH 1 TIME WAIVED NTW 3/14/03

PROCEEDING

DCCO:

JUDGE KENNETH KINGSBURY

DEP. D.A. DARRYL STALLWORTH

DEP. CLERK WANDA BOYNS

DEF. ATTY. DEBORAH LEVY

REPORTER GERALD DOHRMANN

OTHERS

☐ Not Present

Defendant: ☒ Present ☐ Not Present ☐ Excused ☒ In Custody ☐ Pro Per

☐ Interpreter _____ is present. Language spoken: _____

☐ Defendant duly arraigned/advised as to constitutional rights ☐ Defendant waives arraignment ☐ Waiver of Rights filed

☐ Defendant served: ☐ Complaint ☐ Discovery ☐ Petition ☐ Motion ☐ Protective Order (PC 136.2)

☐ Referred to Public Defender ☐ Public Defender files conflict ☐ Financially ineligible ☐ Private counsel appointed

☐ Plea Withdrawn ☐ Change of Plea ☐ Plea to count(s) _____ ☐ Not Guilty ☐ Guilty ☐ No Contest/Found Guilty

☐ stipulates to: lesser included / reasonably related offense of count(s) _____ to charge(s) _____

☐ me waived for: ☐ Preliminary Examination _____ days ☐ Trial ☐ Sentence ☐ Time not waived ☐ Time waiver withdrawn

☐ Clauses: ☐ Stricken ☐ Admitted ☐ Sentencing Purposes Only

☐ Priors: ☐ Stricken ☐ Admitted ☐ Denied

☐ Probation: ☐ Conditional Sentence: ☐ Granted for _____ years/months ☐ See attached conditions

☐ Revoked ☐ Restored ☐ Modified ☐ Extended to _____ ☐ Continue on same terms and conditions ☐ Terminated

☐ Defendant admits probation violation ☐ Previous order revoking probation vacated, set aside, defendant restored to probation

☐ Submit to search and seizure of person, residence, vehicle or any property under defendant's control _____

☐ No contact with / not to annoy _____, directly or indirectly: stay at least _____ away

☐ Additional order(s): _____

☐ Petition/Motion _____ ☐ Granted ☐ Denied ☐ Withdrawn

☐ Referred to: ☐ Probation Dept. ☐ Financial Hearing Officer ☐ _____

Restitution: ☐ Referred to _____ for Determination ☐ Ordered ☐ Reserved ☐ Modified

☐ Bail Forfeited ☐ Bail Forfeiture Set Aside ☐ Bail Reinstated ☐ Bail Exonerated ☐ Summary Judgment Entered

☐ Bench Warrant: ☐ Issued ☐ Withheld ☐ Withdrawn ☐ Bail Set at \$ _____ ☐ No Cite Release ☐ Night Service

2X CERT-CRT:WMM

MAINTAIN 3/6/03 JT

Print Date: _____ Time: _____ Dept. _____ Proc.: _____ Date: _____ Time: _____ Dept. _____ Proc.: _____

J Codes: _____

DOCKET NAME KILGORE, IVAN DAWNELL

CT. DATE 3/04/03 DOCK NO. 141033

000328

(7/00)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Dept. No. 006

Date: March 4, 2003

Hon. KENNETH R. KINGSBURY, Judge

Wanda Boyns, Dep. Clk.
Gerald Dohrmann, Reporter

THE PEOPLE OF THE STATE OF CALIFORNIA

Counsel appearing
for PlaintiffDarryl Stallworth, Deputy
District Attorney

Plaintiff

vs.

Counsel appearing
for Defendant

Deborah Levy, Esq

IVAN KILGORE

Defendant

NATURE OF PROCEEDINGS:

JURY TRIAL DAY ONE

Case No. 141033

PFN: BBV550

CEN: 0373689

Above entitled action comes on calendar this date having been continued from March 3, 2003 for jury trial

9:40 a.m. Respective counsel, defendant and prospective jurors are present in the courtroom. Pursuant to stipulation, twenty-three prospective jurors are excused from service on the matter.

9:45 a.m. Twelve prospective jurors are seated in the jury box for questioning.

10:48 a.m. The prospective jurors are admonished for the morning recess.

11:07 a.m. All parties are once again present and questioning of the prospective jurors seated in the jury box is resumed.

12:00 p.m. The jury is admonished for the lunch recess.

1:35 p.m. All parties are present and questioning by the Deputy District attorney resumes.

2:15 p.m. the following prospective jurors are excused for cause: #101066547, #100333866 and #100327771.

2:53 p.m. There being no further challenges, peremptory challenges are now exercised.

3:00 p.m. The prospective jurors are admonished for the afternoon recess.

3:15 p.m. All parties are once again present and peremptory challenges are resumed.

4:20 p.m. The prospective jurors are admonished for the evening and ordered to return on March 6, 2003 at 9:30 a.m. for further jury selection and trial. Upon the request of the prospective juror and pursuant to stipulation #100908103 is excused.

000329

DEBORAH L. LEVY - State Bar #110995

360 Grand Avenue #197

Oakland, CA. 94610

(510) 251-1850

Attorney for Defendant Kilgore

FILED
ALAMEDA COUNTY

MAR 6 - 2003

CLERK OF THE SUPERIOR COURT
By Handa J. Brown DEPUTY

IN AND FOR THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA - OAKLAND JUDICIAL DISTRICT

PEOPLE OF THE STATE OF CALIFORNIA)

NO. 141033

Plaintiff,)

DEFENSE RESPONSE TO DA'S

V.)

OPPOSITION TO DEFENSE MOTION

IVAN KILGORE)

TO PROHIBIT IMPEACHMENT OF

Defendant,)

DEFENDANT WITH OKLAHOMA PRIOR

_____/

The D.A. has confused a few concepts. In order to impeach defendant with a prior felony conviction, the felony must, first, be one of "moral turpitude," *People v. Castro*, (1985) 38 C3d 301/ *Wheeler* (1992) 4 C4th 284. *People v. Collins* (1986) 42 C3d 389. To determine if a crime consists of moral turpitude, the court can only look to "the least adjudicated elements," of the crime, *Castro* (supra,) *People v. Campbell* (1994) 23 Cal. App. 4th 1488.

"Moral turpitude.

[1] Under Evidence Code 788, a defendant who testifies may be impeached with a prior conviction of any felony evincing moral turpitude, defined as the "general readiness to do evil." (*People v. Castro* (1985) 38 Cal.3d 301, 313-316 [211 Cal.Rptr. 719, 696 P.2d 111].) Only if "the least adjudicated elements of the conviction necessarily involve moral turpitude" is the conviction admissible for impeachment. (*Id.* at p. 317.)

The "least adjudicated elements" test means that "from the elements of the offense alone-without regard to the facts of the particular violation-one can reasonably infer the presence of moral turpitude." (*People v. Thomas* (1988) 206 Cal.App.3d 689, 698 [254 Cal.Rptr. 15], italics added;

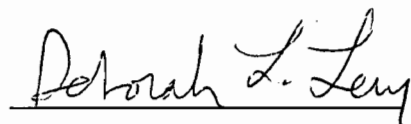
1 accord, *People v. White* (1992) 4 Cal.App.4th 1299, 1303 [6 Cal.Rptr.2d 259]; *People v. Bautista*
2 (1990) 217 Cal.App.3d 1, 6 [265 Cal.Rptr. 661].) In other words, a court need not determine that
3 a criminal statute could be violated only with evil intent in order to find that a conviction under
4 that statute evinces moral turpitude, because it is possible to imagine a set of circumstances under
5 which almost any statute might be violated without evil intent; only a " 'substantial assurance that
6 the credibility of a witness is adversely affected by his having suffered [a] conviction' " for a given
7 offense is required. (Thomas, supra, 206 Cal.App.3d at p. 698, original italics, quoting *People v.*
8 *Castro*, supra, 38 Cal.3d at p. 313.)" see *Campbell* (supra) at 1492.

9 The D.A. CAN go to the record of a prior conviction to prove that the prior is a serious or
10 violent felony, *People V. Barrow* (1996) 46 Cal. App.4th 1573, *Woodell*, (1998) 17 C4th 448.
11 Then if the record does Not show if it was a serious or violent felony, the court is bound to the
12 least adjudicated elements test, citing *Jones* 75 Cal.App. 4th 616.

13 However, the court cannot go beyond the least adjudicated elements test, to find if there is
14 moral turpitude. It is the statute and not the specific conduct.

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16 Dated: March 4, 2003

17 Respectfully Submitted,

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21 Deborah L. Levy
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RENE DAVIDSON COURTHOUSE

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

000331

CLERKS DOCKET AND MINUTES

KILGORE, IVAN

DEPT. 006 CRT. DATE/TIME 3/06/03 09:30

EVENT NAME KILGORE, IVAN DAWNELL

RPT. NO. 00-64017 DOCK NO. 141033

PROC. JT CEN. 0373689 PFN. BBV550 A DAY 11/01/00 SJ DATE 9/12/03
COUNTS PIC 00S00 AAG-OPD ACITY DA

CHARGES 1)F187 SC&USE PC 1 PR

STAT SET BAIL \$0.00 TOTAL DAYS IN CUSTODY: 854

BAIL STAT. BOND DT. BOND CO. DOB 05/05/75
BAIL STAT. BOND DT. BOND CO. BAC
FINE/REST. DATE PAID REC. NO. NORTH 1 TIME WAIVED NTW 3/14/03

PROCEEDING

DCCO:

JUDGE KENNETH KINGSBURY
DEP. CLERK WANDA BOYNS
REPORTER GERALD DOHRMANNDEP. D.A. DARRYL SMALL WORTH
DEF. ATTY. DEBORAH LEVY
OTHERS ☐ Not Present

Defendant: ☒ Present ☐ Not Present ☐ Excused ☒ In Custody ☐ Pro Per
☐ Interpreter is present. Language spoken: _____
☐ Defendant duly arraigned/advised as to constitutional rights ☐ Defendant waives arraignment ☐ Waiver of Rights filed
☐ Defendant served: ☐ Complaint ☐ Discovery ☐ Petition ☐ Motion ☐ Protective Order (PC 136.2)
☐ Referred to Public Defender ☐ Public Defender files conflict ☐ Financially ineligible ☐ Private counsel appointed
☐ Plea Withdrawn ☐ Change of Plea ☐ Plea to count(s) ☐ Not Guilty ☐ Guilty ☐ No Contest/Found Guilty
☐ Stipulates to: lesser included / reasonably related offense of count(s) to charge(s)
☐ ne waived for: ☐ Preliminary Examination _____ days ☐ Trial ☐ Sentence ☐ Time not waived ☐ Time waiver withdrawn
☐ **Clauses:** ☐ Stricken ☐ Admitted ☐ Sentencing Purposes Only
☐ **Priors:** ☐ Stricken ☐ Admitted ☐ Denied
☐ **Probation:** ☐ **Conditional Sentence:** ☐ Granted for _____ years/months ☐ See attached conditions
☐ Revoked ☐ Restored ☐ Modified ☐ Extended to _____ ☐ Continue on same terms and conditions ☐ Terminated
☐ Defendant admits probation violation ☐ Previous order revoking probation vacated, set aside, defendant restored to probation
☐ Submit to search and seizure of person, residence, vehicle or any property under defendant's control
☐ No contact with / not to annoy _____, directly or indirectly: stay at least _____ away
☐ Additional order(s): _____
☐ Petition/Motion _____ ☐ Granted ☐ Denied ☐ Withdrawn
☐ Referred to: ☐ Probation Dept. ☐ Financial Hearing Officer ☐ _____
Restitution: ☐ Referred to _____ for Determination ☐ Ordered ☐ Reserved ☐ Modified
☐ Bail Forfeited ☐ Bail Forfeiture Set Aside ☐ Bail Reinstated ☐ Bail Exonerated ☐ Summary Judgment Entered
☐ **Bench Warrant:** ☐ Issued ☐ Withheld ☐ Withdrawn ☐ Bail Set at \$ _____ ☐ No Cite Release ☐ Night Service

2X CERT-CRT:WMM

Date: 3-10-08 Time: 0930 Dept. 06 Proc.: FJT Date: _____ Time: _____ Dept. _____ Proc.: _____

Codes: _____

DOCKET NAME KILGORE, IVAN DAWNELL

CT. DATE 3/06/03 DOCK NO. 141033

000332

(7/00)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Dept. No. 006

Date: March 6, 2003

Hon. KENNETH R. KINGSBURY, Judge

Wanda Boyns, Dep. Clk.
Gerald Dohrmann, Reporter

THE PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff

Counsel appearing
for PlaintiffDarryl Stallworth, Deputy
District Attorney

vs.

Counsel appearing
for Defendant

Deborah Levy, Esq

IVAN KILGORE

Defendant

NATURE OF PROCEEDINGS:

JURY TRIAL DAY TWO

Case No. 141033

PFN: BBV550

CEN: 0373689

Above entitled action comes on calendar this date having been continued from March 4, 2003 for jury trial

9:37 a.m. Respective counsel, defendant and prospective jurors are present; selection of the jury and alternates is resumed.

10:45 a.m. The prospective jurors are admonished for the morning recess.

11:04 a.m. All parties are once again present and peremptory challenges are excused.

12:02 p.m. There being no further challenges the jury and alternates are not sworn. The Court thanks and excuses the remainder of the prospective jurors seated in the audience from further service on this case.

12:08 p.m. The jury and alternates are released to the custody of the Bailiff. The jurors are ordered to return on March 10, 2003 at 9:30 a.m. at which time they will be sworn to try the cause.

12:10 p.m. Court is in recess for lunch.

1:35 p.m. Respective counsel and defendant are present to discuss trial issues. Defendant's motion to dismiss Oklahoma conviction as a strike and possible five-year prior conviction is discussed in brief.

2:00 p.m. **INSPECTOR PETER CARLSON** is sworn and examined on behalf of the People for a due diligence hearing in regards to a potential witness Bianca Moore.

2:07 p.m. Cross-examination of the witness by counsel for the defendant.

2:18 p.m. The matter is argued and submitted, with the Court makes no ruling at this time and takes the matter under submission.

2:33 p.m. Court is in recess for the evening with the matter continued to March 10, 2003 at 9:30 a.m. for further jury trial.

RENE DAVIDSON COURTHOUSE

C00333

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

CLERKS DOCKET AND MINUTES

DEPT. 006 CRT. DATE/TIME 3/10/03 09:30

EVENT NAME KILGORE, IVAN DAWNELL RPT. NO. 00-64017 DOCK NO. 141033

PROC. FJT CEN. 0373689 PFN. BBV550 A DAY 11/01/00 SJ DATE 9/16/03

COUNTS

PIC 00500 AAG-OPD ACITY OA

CHARGES 1)F187 SC&USE PC 1 PR

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BAIL STAT. BOND DT. BOND CO. DOB 05/05/75

BAIL STAT. BOND DT. BOND CO. BAC

FINE/REST. DATE PAID REC. NO. NORTH 1 TIME WAIVED NTW 3/14/03

PROCEEDING

DCCO:

JUDGE KENNETH KINGSBURY

DEP. D.A. DARRYL STALLWORTH

DEP. CLERK WANDA BOYNS

DEF. ATTY. DEBORAH LEVY

☐ Not Present

REPORTER GERALD DOHRMANN

OTHERS

Defendant: ☒ Present ☐ Not Present ☐ Excused ☒ In Custody ☐ Pro Per☐ Interpreter is present. Language spoken:☐ Defendant duly arraigned/advised as to constitutional rights ☐ Defendant waives arraignment ☐ Waiver of Rights filed☐ Defendant served: ☐ Complaint ☐ Discovery ☐ Petition ☐ Motion ☐ Protective Order (PC 136.2)☐ Referred to Public Defender ☐ Public Defender files conflict ☐ Financially ineligible ☐ Private counsel appointed☐ Plea Withdrawn ☐ Change of Plea ☐ Plea to count(s) ☐ Not Guilty ☐ Guilty ☐ No Contest/Found Guilty☐ Stipulates to: lesser included / reasonably related offense of count(s) to charge(s)☐ Time waived for: ☐ Preliminary Examination days ☐ Trial ☐ Sentence ☐ Time not waived ☐ Time waiver withdrawn☐ Sentencing Purposes Only☐ Priors: ☐ Stricken ☐ Admitted ☐ Denied☐ Probation: ☐ Conditional Sentence: ☐ Granted for years/months ☐ See attached conditions☐ Revoked ☐ Restored ☐ Modified ☐ Extended to ☐ Continue on same terms and conditions ☐ Terminated☐ Defendant admits probation violation ☐ Previous order revoking probation vacated, set aside, defendant restored to probation☐ Submit to search and seizure of person, residence, vehicle or any property under defendant's control☐ No contact with / not to annoy, directly or indirectly: stay at least away☐ Additional order(s):☐ Petition/Motion ☐ Granted ☐ Denied ☐ Withdrawn☐ Referred to: ☐ Probation Dept. ☐ Financial Hearing OfficerRestitution: ☐ Referred to for Determination ☐ Ordered ☐ Reserved ☐ Modified☐ Bail Forfeited ☐ Bail Forfeiture Set Aside ☐ Bail Reinstated ☐ Bail Exonerated ☐ Summary Judgment Entered☐ Bench Warrant: ☐ Issued ☐ Withheld ☐ Withdrawn ☐ Bail Set at \$ ☐ No Cite Release ☐ Night Service

2X CERT-CRT:WMM

nt: Date: 3-11-03 Time: 0930 Dept. 06 Proc.: FJT Date: Time: Dept. Proc.:

Codes:

DOCKET NAME KILGORE, IVAN DAWNELL CT. DATE 3/10/03 DOCK NO. 141033